

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

ALICE H. ALLEN, et al.

V

DAIRY FARMERS OF AMERICA,
INC., et al.

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CIVIL FILE NO. 09-230

FAIRNESS HEARING
Friday, May 13, 2016
Burlington, Vermont

BEFORE:

THE HONORABLE CHRISTINA R. REISS
Chief District Judge

APPEARANCES:

BRENT W. JOHNSON, ESQ., and KIT A. PIERSON, ESQ.,
Cohen Milstein Sellers & Toll PLLC, 1100 New
York Avenue, N.W., Washington, D.C.; Attorneys
for the Plaintiffs

ROBERT G. ABRAMS, ESQ., BakerHostetler LLP,
Washington Square, Suite 1100, 1050 Connecticut
Avenue, NW, Washington, D.C.; Attorney for the
Plaintiffs

Appearances Cont'd...

ANNE NICHOLS PIERCE
Registered Professional Reporter
United States District Court
Post Office Box 5633
Burlington, Vermont 05402
(802) 860-2227

APPEARANCES CONTINUED:

STEVEN R. KUNEY, ESQ. Williams & Connolly LLP,
725 Twelfth Street, N.W., Washington, D.C.;
Attorney for Defendant Dairy Farmers of America,
Inc.

IAN P. CARLETON, ESQ., Sheehey, Furlong & Behm,
P.C., 30 Main Street, Burlington, Vermont;
Attorney for the Defendant

DANIEL J. SMITH, ESQ., Northeast Dairy Compact
Commission Executive Director, 16 State Street,
Montpelier, Vermont; Attorney for the
Intervenors

RICHARD T. CASSIDY, ESQ., Hoff Curtis, 100 Main
Street, Burlington, Vermont; Attorney for the
Intervenors

*** ** ***

ANNE NICHOLS PIERCE
Registered Professional Reporter
United States District Court
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1 FRIDAY, MAY 13, 2016

2 (The following was held in open court at 10:05 a.m.)

3 COURTROOM DEPUTY: Your Honor, the matter
4 before the Court is civil case number 90-CV-230, Alice
5 Allen, et al., versus the Dairy Farmers of America,
6 Incorporated, et al. Representing the plaintiff are
7 attorneys Kit Pierson, Brent Johnson and Robert Abrams.
8 Representing the defendant are attorneys Steven Kuney
9 and Ian Carleton. And we are here for a fairness
10 hearing.

11 THE COURT: Good morning. I am going to kind
12 of tell you how we are going to proceed today and give
13 you some ideas of things that you might want to talk
14 about and hopefully answer any questions you will have
15 before you appear.

16 The Court received approximately 1400 letters. I
17 have read those letters whether or not they were timely,
18 so don't worry about that. A few were not from class
19 members. If you are not a class member, you can't
20 actually object or approve of the settlement. A few
21 were from people who had opted out of the class and so
22 they're no longer class members. But most of them were
23 from people who had closely followed this litigation,
24 that were aware of the claims, that had some very
25 important insights into the dairy industry, this case

1 and the proposed settlement, and I read them with
2 interest.

3 So if for any reason you don't get to speak, don't
4 worry. I have read your written comments.

5 We are going to try to get to everybody today who
6 filed in accordance with the Court's rules about an
7 opportunity to speak. In order to do this, I am going
8 to have to set some ground rules. So I am planning on
9 each of you presenting for about five to seven minutes.
10 I am going to be watching the clock, but I want to focus
11 on what you are saying. Please be careful yourself in
12 that respect, and then I won't have to be rude and
13 interrupt you.

14 It sometimes helps to collect your thoughts in
15 bullet points: "These are the five things that I want
16 the judge to take away from my remarks." It's fine to
17 repeat other things that -- things that other people
18 have said, but you might want to offer new information.

19 You can talk about the attorneys' fees if you would
20 like. That's going to be decided in a separate motion.
21 We are going to try to get through everybody who has
22 notified us of their intent to appear in a timely
23 fashion. We will call out the names. You can come
24 forward. You are not going to be under oath. If you,
25 for some reason, wanted to be under oath, that's fine.

1 It's not required for a fairness hearing. So that -- I
2 will leave that up to you, but I don't expect people
3 will be under oath, and they will not be subject to
4 class -- to cross examination. So nobody will be
5 questioning you about the remarks that you offer.

6 Please remember that we are in a courtroom, so make
7 sure that your remarks are courteous. I know that
8 people have some strongly held opinions. That's fine.
9 I want to hear them, but I want you to choose language
10 that's appropriate for a courtroom.

11 Some of the things that I am going to be deciding
12 today may be helpful in framing your remarks. One of
13 the things that I am going to have to look at in terms
14 of approving this settlement is whether it was
15 procedurally fair. Who was involved in the
16 negotiations? How did the negotiations occur? Were
17 they fair and at arm's length? Were opposing viewpoints
18 considered? And, is this a procedurally fair
19 settlement?

20 The next thing I am going to have to determine is
21 whether this is a substantively fair settlement, and the
22 Court is directed to look at a number of factors to make
23 this determination. These are factors that are set
24 forth in the law:

25 The complexity, expense and likely duration of the

1 litigation; the reaction of the class to the settlement;
2 the stage of the proceedings and the amount of discovery
3 completed prior to the settlement; the risks of
4 establishing liability. So how likely was it that the
5 plaintiffs would win at trial or the defendants win at
6 trial? Would there be appeals thereafter? How long
7 would it take to reach a different resolution through a
8 trial?

9 The risks of establishing damages. The risks of
10 maintaining the class through the trial. So in the
11 event that the class got decertified, we would have a
12 trial for individuals but we would not have a
13 class-action suit. That would be a very different case.

14 The ability of the defendants to withstand a
15 greater judgment. Could they pay more? Should they pay
16 more? Why should they pay more?

17 The range of reasonableness of the settlement fund
18 in light of the best possible recovery. So how does
19 this match up to what would happen at trial in the best
20 possible circumstances, but again, factoring in the
21 appeals period, evidentiary rulings, other factors?

22 And so those are the things I am going to be
23 looking at and you may want to consider as well. And
24 what we are going to do is we are going to get started
25 right away with people, and I know some of you have to

1 leave, and the attorneys will speak at the end of the
2 hearing.

3 So it's much more important that I hear from class
4 members than attorneys at this fairness hearing, and the
5 goal is to determine whether this proposed settlement,
6 which I will call the December 2015 settlement, is fair,
7 reasonable and adequate.

8 The first person is Kenneth Dibbell, and if he
9 would come forward. We are doing this in the order in
10 which we received your notice of intention to speak. I
11 will hear from him.

12 And I will ask you, when you come forward, if you
13 will just state and spell your name for the record.

14 KENNETH DIBBELL: And that is Kenneth Dibbell,
15 not Dibbell (pronunciation).

16 THE COURT: Sorry, sir.

17 KENNETH DIBBELL: I am only going to give
18 you people today a brief history lesson on the dairy
19 industry.

20 In 1940, we had 4.66 million licensed and inspected
21 dairy producers. 97 percent of those farms were from
22 one to 29 cows. Over the years, we suffered
23 considerable attrition for various reasons.

24 We will go fast-forward to 1980, more or less
25 modern times. In 1980, we still had 350,000 dairy

1 producers in this nation. Today, we're down to 43,000
2 and falling. That's less than one percent of the farms
3 we had in 1940 producing milk. It's an outrage.

4 We have taken the hardest-working people in this
5 nation, 14 hours a day, seven days a week, and we have
6 put them out of business due the economic strangulation,
7 failure to pay them what it costs to make the product.
8 There's a few people responsible for this.

9 It starts in Washington with our government. USDA,
10 economic research, calculates to current cost of
11 production for 23 states, average 27.66 per
12 hundredweight, but AMS is currently administering a pay
13 price under \$13 per hundredweight. While it's pretty
14 difficult to pay 25, \$27 of the cost with 13 or \$14,
15 Houdini, that's the only one I know of, that could do
16 it.

17 It's an outrage what we have done to the
18 dairy-producing community, and it's not just the
19 government's fault; the dairy cooperatives' are equally
20 irresponsible for their farmer/owner, quote, members not
21 to come up with a supply management system and quit
22 flooding the market. That's why our price is in the
23 toilet.

24 Global market kept us going for a couple of years
25 with 15, 17 percent exports. Well, my position on the

1 global market is we need to get out of the global
2 market. We need to cancel NAFTA, GATT and WTO, which
3 was responsible for doing away with the COOL labeling,
4 and our consumers have a right to know where their food
5 comes from, and that COOL labeling, country-of-origin,
6 labeling, was a good item. And our people deserve to
7 have that, and the good state of Vermont probably does
8 still have it.

9 Currently -- I am going to leave this with the
10 Court. It's an explanation of the bill that could have
11 solved this problem way back in 2007. The Casey-Specter
12 bill, Senate 1640, had a supply management system, a
13 proper pay price to keep farmers farming, and the
14 surplus, if there was one, was going to be manufactured
15 at the cost of the producers and given to the food
16 banks, a very common-sense principle. Taxpayer money
17 wasn't going to be involved.

18 I mean, we used to have a system where the
19 government bought the product and gave it away. This
20 was designed with total common sense.

21 Those who continued to grow and overproduce beyond
22 the market needs were going to pay for the
23 manufacturing, and it was going to be donated to the
24 food banks.

25 It is my hope that this Court will see the light,

1 put this thing before a jury. In the Southeast case, a
2 parallel situation, Dean Foods and DFA coughed up \$300
3 million, and here we have the same situation where Dean
4 Foods got away for 30 mill and DFA is still trying to
5 get away with 50 mill and no fault.

6 It's an outrage. I'm finished. And that if I got
7 time left, and I should have, I'll yield it to Joshua
8 Car -- Haar. Thank you.

9 THE COURT: Thank you.

10 Next person --

11 KENNETH DIBBELL: This is for the Court.

12 THE COURT: Okay. And if you give it to Jen,
13 she will take it.

14 THE COURT: Stephen Taylor.

15 KENNETH DIBBELL: Thanks, Jen.

16 STEPHEN TAYLOR: Thank you, your Honor. My
17 name is Stephen H. Taylor; S-t-e-p-h-e-n H. Taylor,
18 T-a-y-l-o-r.

19 I am a dairy farmer of some 40 years. I farm with
20 my sons in the village of Meriden, New Hampshire. I
21 served from 1982 until 2007 as the commissioner of
22 agriculture for the State of New Hampshire. Throughout
23 my lifetime, my adult lifetime, and involvement in dairy
24 farming, I have had an enormous interest in dairy policy
25 issues, and in retirement I continue to hold that

1 interest.

2 I am one of the new named representatives who was
3 admitted to this case by the Court, and I am here today
4 to appear to support the proposed settlement that has
5 been placed before the Court, and I also wish to support
6 the alternative fee motion that has been offered.

7 The letter that I submitted to the Court on April
8 27th goes into considerable detail about my position on
9 this matter. I will try at this point just to hit some
10 of the highlights.

11 I petitioned the Court to enter the case because I
12 was extremely troubled by the apparent heavy focus on
13 monetary relief and the inadequacy of the nonmonetary
14 provisions that were proposed in the initial settlement.
15 I was also deeply concerned about the breakdown in the
16 relationship between the named representatives and the
17 plaintiffs' counsel, and I was further concerned deeply
18 about the fee that was proposed as being excessive.

19 This proposed settlement represents a significant
20 improvement, in my view, over the first proposal in
21 several respects. Provision for an audit, for an
22 ombudsman, for a clarification on full-supply contracts
23 and testing protocols are all very, very important, but
24 it's important, I think, that this Court recognize that
25 the log jam that was represented in the first proposed

1 settlement has been broken through a great deal of
2 effort on the part of counsel, on the part of named
3 representatives.

4 The negotiations that I have been involved with
5 have been very respectful. They have recognized that
6 there are considerable variances in viewpoints. I think
7 everybody who wished had a chance to be heard, and we
8 worked very, very diligently to get to the point we're
9 at today.

10 The most important provision of this proposed
11 settlement, your Honor, is the provision for an audit,
12 and I think that that is a breakthrough and of extreme
13 importance. Also essential that the audit have adequate
14 resources to be conducted fully and thoroughly.

15 The new and strengthened provisions of the proposed
16 settlement, I feel, and the Court's power to make them
17 work, can alter the defendants' practices that left us
18 at this -- resulted in the bringing of this action.

19 Your Honor, I believe the alternative of going to
20 trial is not rational at this point. My feeling is that
21 all could be lost in the long shot of attempting to win
22 at trial.

23 The majority of the messages the Court has
24 appeared -- has received appear to favor the settlement.
25 There are some very strongly held views in opposition,

1 and I recognize 'em and I respect them, but there are
2 also thousands of people who have not been heard who are
3 within the class. And I think the attitude of those
4 people can be summed up in this way: They trust the
5 Court in a fiduciary role to manage this matter in their
6 best interests, and I think -- I urge the Court to take
7 that as my view.

8 Some people look at this as a glass half empty;
9 others look at it as a glass half full. However it is
10 viewed, I think it is worthwhile pursuing the settlement
11 as it is presented today.

12 Speaking to the fee, the combined DFA, Dean
13 monetary settlement would amount to about \$80 million.
14 I believe a 20-percent allocation for fee, placing that
15 at 16 million, would be proper. In the scale of the
16 business activities that these entities represent,
17 billions and billions of dollars, this recovery is quite
18 small.

19 Division of the fee. The case is where we are
20 because of the efforts of the new named representatives,
21 and the previously named representatives as well, and
22 also the counsel, and I wish the Court to take note of
23 the hard work and dedication, diligence and talent that
24 was brought to bear by my counsel, Mr. Smith, and
25 Mr. Cassidy. They brought knowledge of the intricacies

1 of the northeastern dairy industry to bear in a very
2 productive and important way, and they also made certain
3 that the process by which we continued the negotiations
4 were very open and respectful.

5 Thank you, your Honor.

6 THE COURT: Thank you.

7 Darrel Aubertine.

8 DARREL AUBERTINE: Morning, your Honor.

9 THE COURT: Good morning.

10 DARREL AUBERTINE: And thank you for the
11 opportunity. Again, my name is Darrel. I am former
12 commissioner of ag and markets in New York State. My
13 name is D-a-r-r-e-l A-u-b-e-r-t-i-n-e.

14 I'd like to speak on essentially three issues. I
15 would first like to speak on the issue of the settlement
16 itself in support of the settlement. I would also like
17 to give my thoughts with regard to the comments that you
18 spoke of earlier, these letters from the farm community.
19 I would also like to emphasize my support for my former
20 colleague, Steve Taylor, with regard to the attorneys'
21 fees.

22 I am a former dairy farmer, some people call
23 recovering dairy farmer, from northern New York State.
24 And northern New York State, not unlike other places in
25 the nation, faces a lot of issues with regard to outlets

1 for the milk -- the dairy community does. Like many
2 others, I have been concerned with the apparent
3 manipulation in the marketplace that seems to work to
4 the detriment of the dairy community. I joined the suit
5 to see if something better could be made of the proposed
6 settlement that the Court rejected earlier.

7 As the Court decided, there was obviously too much
8 focus on money and not enough on an attempt to do more
9 to change the conduct of DFA and DMS in the marketplace,
10 and we were appreciative of the window that we were
11 given last fall to do what we could to improve upon the
12 settlement.

13 Mr. Smith and myself were instrumental in
14 organizing several meetings in Albany, New York, as well
15 as numerous phone calls, e-mails and the like, to try to
16 put together as best we could an alternative, an
17 enhanced -- the settlement that was rejected.

18 Now I can't say that we ended up with sweeping
19 reform. We didn't. And from the first meeting with the
20 original class counsel, it was very apparent that the
21 case wouldn't allow for this anyway. But I still
22 strongly believe the settlement is an important,
23 positive first step toward a more open marketplace.

24 The attorneys have identified the many new
25 proposals and parts thereof and how they would work with

1 the original provisions. The net result should --
2 should be that the defendants are going to have to
3 operate in a more transparent fashion both as a business
4 enterprise and now as they relate to their own members.

5 Even if I'm not a DFA member, I, for one, plan to
6 keep a close eye on the position of advisory council
7 member. The time and resources are there now for that
8 position to make a real change. The net change should
9 come in the form of higher farm gate prices.

10 I will also be very interested to observe the
11 ombudsperson's work. This is an innovation that should
12 prove to be a real change in the cooperative's operating
13 culture. I expect the other cooperatives will be
14 observing to see how this works as well.

15 Now, with regard to the many letters you have
16 received, I would like to provide a few thoughts of my
17 own as a former commissioner but that as a
18 multigenerational farmer as well.

19 First, I think it's very meaningful that you have
20 received well over a thousand letters. I believe it's
21 rare that the farm community in general would respond in
22 such a manner. I also think you have gotten a
23 representative response. The relative number of
24 supporters versus the opponents indicate by -- indicate
25 by their letters the overwhelming support which is

1 strongly in favor of the new provisions for the reasons
2 stated. And I -- also bringing this case to conclusion
3 was a major factor in farmers that I had the opportunity
4 to talk to.

5 Now, as far as the fee, I would like to associate
6 myself with the comments of my former colleague, Steve
7 Taylor. The legal fee of over \$22 million, roughly 25
8 percent of the settlement, exceeds -- it would seem to
9 me, is excessive and based on the criteria used in the
10 Southeast case and in the Dean Food case here in the
11 Northeast.

12 While I do not believe, as I said, that the
13 settlement is an important first step toward a more open
14 marketplace, it still won't accomplish as much as was
15 done down south. Of course the monetary recovery, even
16 combined with the prior settlement, isn't nearly the
17 same.

18 I am not doubting that substantial -- a substantial
19 fee has been earned. Again, as a policymaker, I
20 understand that we need to provide an incentive for
21 attorneys to pursue these difficult cases, but Steve and
22 myself believe that a proposed 20-percent, roughly,
23 combined fee, amounting to \$16 million -- and again, I
24 pretend to be no expert -- would seem to be more in
25 line.

1 I also believe, as Mr. Taylor just -- just said,
2 that Mr. Smith and Mr. Cassidy deserve more than a
3 straight-line share of the fee. Mr. Smith, in
4 particular, really did come in at a time and use his
5 expertise for the -- from a dairy perspective on dairy
6 issues to get us to the point where we are today.

7 THE COURT: So we're coming up on your time.
8 Go ahead. Just a couple --

9 DARREL AUBERTINE: In closing, I believe the
10 overwhelming majority of the dairy farm community do
11 want to establish clear guidelines as to what is and is
12 not acceptable in the marketplace. And as I said
13 earlier, the settlement should not be looked at as
14 sweeping reform but rather a positive step in an effort
15 to bring fairness and equity to the marketplace;
16 therefore, I do support settling of the case.

17 THE COURT: Thank you.

18 The next person is Lyle Wood.

19 LYLE WOOD: Good morning, your Honor.

20 THE COURT: Good morning.

21 LYLE WOOD: My name is Lyle J. Wood, L-y-l-e
22 J. W-o-o-d.

23 I own and operate Wood Farms, LLC, in Clayton, New
24 York, with my cousin, Scott Bourcy. I'm a
25 third-generation dairy farmer. I have worked at the

1 farm since I was nine years old.

2 The farm was started in 1945 by my grandfather,
3 Henry Wood, with 16 cows. We currently milk over 1200
4 cows on two dairies and ship our milk through the home
5 dairy independently and through our other dairy through
6 Agri-Mark. We have been with DMS since they have been
7 incorporated and started, and at the other dairy we have
8 been at Agri-Mark for four years.

9 Additionally, I am a state director for DairyOne,
10 and I am in favor of settling this lawsuit. I have a
11 wife, Jennifer, who is here with me today, and I have
12 three children: Hannah, Henry and Harrison.

13 At DairyOne, the core of DairyOne is the belief in
14 agriculture's integrity; integrity, professionalism,
15 commitment and innovation. That's the key to our
16 long-term success at DairyOne.

17 The DairyOne milk lab is one of the largest of its
18 kind in North America. Our staff excels at testing milk
19 accurately. DairyOne has invested in top-of-the-line
20 equipment.

21 Every day the lab receives 2500 to 3,000 bulk tank
22 milk samples tested for food safety and farmer payment
23 purposes. DFA makes up only half of our bulk tank
24 business. Each day the lab also tests an average 20,000
25 individual cow milk samples. Farmers use these results

1 to better manage their herds. The large number of
2 samples the lab receives every day requires a system
3 that is designed to provide accurate results for
4 samples, but not making --

5 THE COURT: So let me just stop you. This
6 happens to anybody who reads, you speed up. I do it to
7 her all the time. So she is having a hard time keeping
8 up with you.

9 LYLE WOOD: Oh. My wife told me when I came
10 up to slow down, so --

11 THE COURT: That's okay. Whenever -- when you
12 read, you speed up. Go ahead. You are doing fine.

13 LYLE WOOD: Sorry. I had it written down.

14 So the lab has approximately 20,000 samples a day
15 that they receive in the lab. And at DairyOne, our
16 board is made up of 17 directors, 14 which are elected
17 at large and then three DFA board members, to make a
18 total of 17.

19 The milk analyzers are checked every week by the
20 USDA at our lab. There are 12 people involved in doing
21 the samples on a daily basis. Every sample is handled
22 by at least three employees during every test. The lab
23 is regulated by numerous state and federal agencies.
24 For example, this winter three different agencies
25 visited over three weeks to inspect the laboratory.

1 I am in favor of settling this lawsuit because DMS
2 has been good to us since we have been with DMS. We
3 have been independent. We have never been threatened
4 or felt threatened, neither way. Any time we've had a
5 problem or anything going on with DMS, they have been
6 very helpful in solving any of our problems, from a test
7 sample or anything else that we have done with them.
8 And they have always -- they have never, you know,
9 wanted us to be in DFA, be in anything else, and being
10 Agri-Mark at the other dairy, they still could care
11 less, you know, what we do, and I don't know how we
12 would market our milk if we didn't have DMS to go
13 through.

14 And with DMS, we have had -- DFA also helps us out
15 with certain problems even though we don't -- we are not
16 a member of the co-op for DFA.

17 So that's all I got to say.

18 THE COURT: Okay. Thank you.

19 LYLE WOOD: Thank you.

20 THE COURT: Gary Genske on behalf of John J.
21 King. I should say Gary Genske.

22 GARY GENSKE: Good morning, your Honor.

23 THE COURT: Good morning.

24 GARY GENSKE: Can the clerk hand you -- I have
25 a typed --

1 THE COURT: Sure.

2 GARY GENSKE: I'm a dairy farmer from New
3 Mexico.

4 THE COURT: So make sure she can take -- the
5 court reporter can take down your -- the spelling of
6 your name.

7 GARY GENSKE: Okay. Might as well be sworn in
8 too.

9 THE COURT: Okay, if you want to.

10 (Gary Genske was duly sworn.)

11 GARY GENSKE: I'm a dairy farmer from New
12 Mexico. We milk about 2,000 cows. I'm a C --

13 THE COURT: So you are -- you are not part of
14 the class, but you are speaking on behalf of somebody
15 who is?

16 GARY GENSKE: Yes.

17 THE COURT: Okay.

18 GARY GENSKE: I'm -- a brief introduction of
19 myself.

20 THE COURT: Okay.

21 GARY GENSKE: I qualify myself first as a
22 dairy farmer. I produce for Dairy Farmers of America.
23 They owe my dairy \$2 million every day of the week. And
24 I am a CPA. Our dairy clients produce about 12 percent
25 of the milk in the country in 31 states. So nobody's

1 more addicted to this industry than probably I am.

2 However -- good morning, your Honor -- I am here
3 with resumé attached at the request of dairy farmer and
4 subclass member John J. King from -- I am going to say
5 it wrong -- Pequea, Pennsylvania, to speak on his behalf
6 and to object to the proposed second amended settlement
7 agreement.

8 In the proposed settlement agreement, defendants
9 DFA/DMS offer, aside from the \$50 million, other
10 concessions that give the illusion that the defendants
11 will become more transparent to their co-op membership.

12 The agreement was written -- or as written, in my
13 opinion, will do very little to change the DFA/DMS
14 management behavior. Various provisions of the
15 agreement are a form over any real substance.

16 First of all -- this is a total of five minutes. I
17 timed it several times. All right.

18 First of all, DFA is a cooperative organized under
19 the laws of the state of Kansas, Chapter 7. I do have
20 it attached, the state law. And the state law states:

21 Associations organized under this act shall be
22 deemed nonprofit as they are not organized to make a
23 profit for themselves as such or for their members as
24 such but only for their members as producers.

25 Second, DFA is a cooperative whose farmer net

1 equity has diminished over the last 10 years from 722
2 million in 2006 -- that's page 13 attached -- to 470
3 million in 2015 -- page three attached.

4 Third, it is a cooperative that has not made any
5 net profit from its own operations and has made profits
6 only from joint ventures in all of the last 10 years --
7 pages -- even numbered pages 4 through 14 --
8 illustrating that only milk-buying customers are making
9 money. The co-op and its member producers are not.

10 Fourth, it is a cooperative offering an
11 out-of-court settlement in this and other antitrust
12 cases. The proposed settlement agreement with the
13 stated goals -- on page 20 of the agreement -- to
14 improve producer pay prices and net income margin for
15 dairy farmers, and it also provides the prudent
16 investment of some proceeds from milk sales that
17 advances the interests of DFA/DMS shippers. The
18 proposed advisory council will be severely limited in
19 achieving any meaningful results. Only granting the
20 advisory council access to the information already
21 presented to DFA's Northeast Area Council, as the
22 agreement calls for, is not sufficient for the advisory
23 council to achieve the above stated goals.

24 The allegations contained in the original complaint
25 occurred under the watchful eye of the Northeast Area

1 Council, therefore, the information DFA provides to the
2 council obviously falls short of full disclosure of
3 information, so restricting the advisory council to only
4 the information the Northeast Area Council receives from
5 DFA will severely limit the effectiveness of the
6 advisory council's purpose.

7 The purpose of the settlement agreement does not
8 make clear how the findings and recommendations of the
9 proposed advisory council get communicated to other than
10 DFA's point of contact or how the council's findings and
11 recommendations will get presented to the Northeast Area
12 Council or, more importantly, to the corporate board in
13 Kansas City. Additionally, the advisory council will
14 severely be bound by confidentiality -- confidentiality
15 provisions -- page 26 of the agreement.

16 One more page. The proposed agreement, on page 32
17 and -3, indicates that DFA's financial information is
18 prepared in accordance with generally accepted
19 accounting principles. It may be true, but providing
20 the advisory council with only the published accounting
21 reports will not satisfy the goals of the advisory
22 council. Published financial information did not
23 prevent the alleged clandestine antitrust activities of
24 DFA and DMS.

25 As a CPA and a DFA dairy farmer, I resent the

1 insinuation that generally accepted accounting principle
2 financial statements would disclose illegal business
3 practices. And for DFA management and any legal
4 representative in this matter to hide illegal business
5 activities behind accounting information published by
6 accountants is a misrepresentation.

7 These apparent rights for DFA to censor or suppress
8 the advisory council's findings or recommendations, and
9 the restriction of all of DFA's records, essentially
10 makes the advisory council's effort no more than a
11 rubber stamp of approval of DFA's Northeast Dairy
12 Council actions. So why have an advisory council and
13 make the settlement -- this settlement provision appear
14 to be a material concession on the part of defendant
15 DFA? Do these provisions provide transparency for DFA
16 and DMS for farmers? I think not.

17 The proposed settlement agreement as written, in my
18 opinion, will have very little impact on how DFA and DMS
19 will do business in the future. If the Court cannot
20 grant the proposed advisory council access to all of DFA
21 and DMS records and reasonable dissemination of the
22 council's findings, I would urge the Court to allow this
23 case to go to trial. Our co-op's behavior must change.

24 With continual decline, as Ken mentioned earlier,
25 of dairy farmers in the country and continued lack of

1 enough profitability for sustainability, we dairy
2 farmers feel we are in the center of a DFA circular
3 firing squad picking off dairymen and eventually killing
4 itself in the process.

5 THE COURT: So you are right at your time. A
6 little bit more?

7 GARY GENSKE: Just my proposal.

8 THE COURT: Okay. Go ahead.

9 GARY GENSKE: So I ask the Court: Reject the
10 second amended agreement and let this matter go to
11 trial, or the proposed settlement -- order the proposed
12 settlement agreement to provide the proposed advisory
13 council full access to all requested records wherever
14 located, to have all findings of the advisory council
15 published without limitation, that the advisory council
16 to be held harmless without retaliation in the same way
17 all attorneys in this case wish to be held harmless, and
18 to appoint myself as the chair of the advisory council.

19 THE COURT: All right. Thank you.

20 Douglas Ricker.

21 DOUGLAS RICKER: Good morning.

22 THE COURT: Good morning.

23 DOUGLAS RICKER: I would like to -- first
24 thing I do is second what the guy just had to say.

25 THE COURT: So we -- I know your name. Would

1 you just spell it for the record.

2 DOUGLAS RICKER: Okay. Douglas Ricker,
3 R-i-c-k-e-r, from Sussex, New Jersey. I hope I don't
4 tear up.

5 I been coming here the last three times with my
6 wife. She's unable to be here today. She has blood
7 clots in both lungs and in her legs, so I'm here
8 representing her and myself. I'd like to give a little
9 history not only of the dairy business since 1937 when I
10 was born, and to the present, which sadly comes to 78
11 years.

12 I started out as a young kid not only milking cows
13 but belonging to one of the largest co-ops in New
14 Jersey, and I started coming to the meetings, and I'm a
15 person don't listen to what you say but I listen to what
16 you don't say, and it's very obvious.

17 So I was going to this co-op meeting, I seen what
18 was going wrong, and no one else could see it, so I
19 brought it up before the board, and then within a
20 month's time they filed bankruptcy.

21 The vice president of the organization came to me.
22 He said, "I been here every meeting, every executive
23 meeting. How do you find out?" And I said, "Don't
24 listen to what they say. You listen to what they
25 don't -- what they don't say."

1 I've been at farm bureau membership. I'm just not
2 some guy down the road. I was the one that made the
3 motion back in the '70s, to start a Northeast dairy
4 committee and farm bureau, and I was a member of that
5 structure for several years, and when this problems
6 what's going on now started, I called my neighbor over
7 my back fence, Lou Dobbs, and I asked him to do a story
8 on the problems with DMS/DFA and what the problems were
9 happening, and he did a very good job.

10 A couple years after that, we had a large tornado
11 in our farm that put us out of business, so -- a few
12 months after that Kit Pierson gave me a call, and we
13 welcomed to -- him to our house, and we spent half the
14 day with him and giving him all the stuff that I knew
15 about what was going on, and a lot of this stuff that I
16 was talking to him about was the founder of the person
17 who started this lawsuit, Mr. Bunting. He's no longer
18 with us. But when Kit got -- and I got done speaking,
19 he says, "You know anyone that can help us out with this
20 case?" And I said yes, I have a good friend. I always
21 don't agree with him, but times to have a best friend,
22 it's best that you always don't agree. So you had some
23 lively discussions.

24 And this guy sits back here to my left,
25 Mr. Southway. We go battles here and there, and I have

1 disagreed with him and have agreed. We had our
2 depositions taken, and we were advised by Mr. Johnson
3 that we don't talk to each other, and I could
4 understand, we're getting ready for a lawsuit, don't
5 talk to each other.

6 So finally, I don't know, it was a year now, in
7 July, when decided to -- not to go to court, and I got a
8 call from Mr. Johnson telling us that we're not going to
9 court, we're going to try to settle the case, and so I
10 felt like I could call Mr. Southway.

11 I gave him a call, and he and I both agreed that,
12 hey, we want this going to court and not be settled. So
13 my thought was all on the same page. That was July.
14 And by December, Mr. Southway and I were talking, and he
15 said, "Well, I been sending some letters to your Honor
16 in the supporting of the settlement," and I said, "No,
17 no, no, no. We agreed we don't want to do this."

18 So -- and as time proceeded, I heard Mr. Southway
19 said he was going to replace someone on one of the
20 committees, and I come up here and try to make that not
21 happen. He's not only my friends, we disagree once in a
22 while.

23 So as this went on, we prevented that from
24 happening. Your Honor was very wise and agreed to leave
25 the Haars on the case, and I saw right. Then I come

1 back, and I got a slap across my face. Not only did
2 Mr. Southway got on the committee, his wife, one of
3 their partners got on the committee, from New Jersey.
4 And I have had 60 years of experience in this, problems
5 in the dairy business, and working with Mr. Bunting on
6 this case to get it started, and, your Honor, you --
7 respectful to you, you appointed this committee of
8 those -- those four people from New Jersey, and that
9 turned the tide on the vote, and that was a mistake,
10 your Honor.

11 I don't want to -- but you don't make it
12 unbalanced. You come in and get four people that I
13 considered didn't know anything about the case.
14 Mr. Southway knew some of the problems, but the other
15 ones, I never seen 'em to a meeting anywheres, whether
16 it's in Albany or it's in Texas or wherever we were, was
17 farm bureau and other things getting things done.
18 So let's leave that alone right there, but --

19 THE COURT: So we are coming --

20 DOUGLAS RICKER: Two other things I want to
21 make a short comment on.

22 I got a phone call one day. They said, "Why don't
23 you call Minnesota and see if you're in or out on this
24 case." So I called out to Minnesota. They have no
25 record of me being involved with this case. I never get

1 any letters involved with this case. I have been
2 through all this stuff of being ready for trial, and
3 that's what happened. But the thing about this case, it
4 ain't worth the paper it's written on. I mean true,
5 honest. I have been on our state board of agriculture
6 in New Jersey, and I don't know if you know Mr. Phil
7 Alampi, one of the most popular secretary of
8 agriculture, goes way back, and he -- I been on bonding
9 committees with him to get co-ops and independent
10 dealers in New Jersey bonded. We got statutes set up
11 that you just can't throw someone out; you have to give
12 'em so many days before they can do that, but it's not
13 fair.

14 So I don't know whether, on this case, I'm in or
15 I'm out, but Mr. Eby -- if you don't resolve this and
16 let it go to court, Mr. Eby, which I have great respect
17 for, is going to -- they have opt out. They were in on
18 the start, the whole thing, all over again, but the
19 thing that caused it to happen this way, when you go and
20 have a imbalance voting on the thing, that is --
21 your Honor, that is unfair. All the years I put in, I
22 deserve more respect than that.

23 So Mr. Southway is still my friend. My wife now
24 will be able tomorrow to take Mr. and Mrs. Southway's
25 daughter to a dairy princess seminar in New Jersey.

1 We're still going to be friends. I am not going to hit
2 him. He is not going to hit me. Right, Mr. Southway?

3 THE COURT: Well, that's good, and we are
4 coming up on Mr. Southway's time, so this is a good
5 segue.

6 DOUGLAS RICKER: Oh, God.

7 THE COURT: All right.

8 DOUGLAS RICKER: I have 10 more minutes to
9 speak, please?

10 THE COURT: No. No, thank you. Thank you
11 very much.

12 DOUGLAS RICKER: You're welcome.

13 THE COURT: Let's have Mr. Southway come
14 forward.

15 PETER SOUTHWAY: Good morning, your Honor.

16 THE COURT: Good morning.

17 PETER SOUTHWAY: Peter Southway,
18 S-o-u-t-h-w-a-y.

19 I wasn't quite prepared to have such an
20 introduction to your court today, but I got one.
21 However, I think what Doug says is actually very, very
22 important, and let me explain why it's important.

23 I'm here today on behalf of my wife and I, who were
24 appointed as additional class representatives. She is a
25 little more comfortable on the farm with the grandkids,

1 so I am going to do the speaking.

2 This hearing is really about equity for all of the
3 class members. I am an independent producer. I was
4 willing to testify against DFA and DMS in this case from
5 the very beginning because of the antitrust issues that
6 were in the case. This case has morphed over time.

7 My experience as 25-year commercial banker, I spent
8 a lot of time with antitrust litigation in the
9 MasterCard, Visa, American Express world, spent a lot of
10 time in federal court in Newark and New York City, so I
11 look at the case a lot differently, and what I have done
12 is try to take this case apart from the very beginning
13 to today as a class representative, what is provable,
14 what is winnable, and what is not.

15 And that's the important part for this case to be
16 analyzed, because if we can't prove it and win it at
17 trial, we really don't have anything. So what I would
18 like to deal with is what are the known factors and what
19 are the unknown factors.

20 You know, we hear a lot about the monetary award in
21 this case. At 50 million, farmers may get \$4,000.
22 Well, if it was a hundred million, they'd get eight. If
23 it was \$150 million, maybe they'd get 12. Because of
24 the large class, there's no big pot of gold for any
25 individual class member here.

1 So I think as when you analyze the monetary data of
2 the settlement of this thing, it really does -- becomes
3 not important, but it is an \$80 million achievement. I
4 dare find anybody else who has brought a case in the
5 Northeast that put \$80 million back into the farmers'
6 pool. It's not a \$10 coupon like a lot of typical
7 class-action cases ended up to be.

8 The second thing that's known and unknown is we
9 look at the injunctive relief. What's written in the
10 agreement, we know and we can read it. And we need to
11 read it carefully. For example, we just heard testimony
12 from an accountant who said that the advisory council
13 member doesn't have records of DMS. It says right in
14 the agreement they have all the records of DMS and NEAC.
15 So you need to read carefully what the "and" means and
16 not make statements that really are not correct.

17 I also believe the advisory council and the farmer
18 ombudsperson are going to be under your authority
19 because you are going to sign this agreement if it goes
20 forward and it's settled. I have asked our attorneys,
21 if we reach a point six months down the road, that we
22 can have an agreed discussion and find out if the
23 advisory council and ombudsperson are fulfilling their
24 obligations. If they are not, they have agreed with me
25 that they will come back and we'll file a motion if we

1 have to because we believe that those positions are
2 important. We believe they can have far-reaching
3 effects. And I think it's important that the Court
4 recognizes that and will also push forward the
5 settlement.

6 So I think the injunctive relief is substantial,
7 it's brought coverage, it's court ordered. The class
8 representatives who are involved, the initial ones and
9 the additional ones, have spent a lot of time, a lot of
10 phone calls, a lot of e-mails, a lot of discussions,
11 meetings in person to try to arrive to the product we
12 are at. And I understand we don't come to an agreement.

13 What I have tried to do is say what are the
14 emotional issues and what are the factual issues in this
15 case. And I can agree with -- Mr. Dilbert, is it? The
16 first speaker today?

17 THE COURT: Dibbell.

18 PETER SOUTHWAY: It's a shame to see the dairy
19 industry go away, but you know what? That's part of
20 America. We have seen a lot industries go away.
21 Consolidation is here today. I don't believe that this
22 case is going to resolve the consolidation issues of the
23 dairy industry.

24 When you look at proposals put up against DFA --
25 let's put 'em into receivership. Well, I think their

1 creditors and their commercial paper people are going to
2 be first in line in receivership and, wait a minute,
3 we'll run the company. And if their creditors are going
4 to run the company, I don't think us dairy farmers are
5 going to work out too well.

6 Make 'em a for-profit company. Let's think about
7 that. For-profit. I was shareholder-driven
8 organization, did it for 25 years, did all the SEC work.
9 I know what shareholder-driven companies do. We are
10 after shareholder profits. Shareholder profits are
11 going to conflict with co-op profits.

12 Capper-Volstead was put in place so that dairy
13 farmers, farmers across this country, can enjoy the
14 immunity, and destroying that would be devastating not
15 only for dairy -- DFA in the Northeast -- and again, it
16 sounds like I am a DFA apologist, and I hate to say I am
17 not, but we have DFA members across this United States
18 of America that we would impact in this case if this
19 Court would say, boom, they no longer have co-op
20 exemption. That would be horrible. That would be a
21 wrong decision for us to even ask for, never mind for
22 the Court to do.

23 Back to the certainty issues: milk testing,
24 adulterated milk, block-voting changes. These are all
25 covered in this agreement in detail. We have never had

1 that protection before, and I think that's important to
2 recognize. And by the way, a farmer does not have to
3 know in advance what milk he wants to get tested. The
4 agreement says he can do it at any time if he thinks he
5 is having a problem. That's what the agreement says.

6 I also think that, in closing, the organized
7 opposition in this case was intent on trying to drive
8 emotional issues, and emotional issues don't typically
9 get solved well in a court of equity. We need to focus
10 on what's fair for every member across the board. And I
11 believe that the settlement we have brought forth here
12 is a fair settlement. Is it a perfect settlement? No.
13 Would we love to see more? Yes. But that's what
14 happens when you settle. You get as much as you
15 possibly think you can against the risk of not accepting
16 it. The risk of a trial, the risk of value limitations,
17 the risk of class decertification, the risk of appeals.
18 Long time before any money, if won, could ever be put
19 into a dairy farmer's pocket. So I think it's time to
20 settle, and I believe that our role is to try to be as a
21 peacemaker.

22 I also would like to throw one other little thing
23 out there for people to think about. You know, we have
24 had very experienced attorneys in this case. I am
25 amazed at their resumés from a professional point of

1 view and what they have accomplished in other
2 class-action cases, some of them incredibly well. And I
3 believe class-action lawyers are the answer to all prior
4 abuse in the United States because they ultimately bear
5 the burden of bringing abuse and settling it and stating
6 the class is going forward.

7 If these attorneys thought that they could win a
8 3-, 4-, \$500 million settlement, you think they are
9 going to stand here and accept 20 percent, 30 percent of
10 the fees today? So I bow a little bit to the expertise
11 that they represent at the table and say: You know
12 what? If they think this is where we ought to be, this
13 is where we ought to be because the evidence isn't there
14 to bring us further. If it was there, I think they'd
15 like to be talking today about 30 percent of a \$500
16 million settlement --

17 Sorry, Mr. Kuney.

18 -- rather than 20 percent of a \$50 million
19 settlement. So I think we just -- as dairy farmers, we
20 need to keep that in the back of our mind, that if our
21 attorneys are saying this is as far as we can go,
22 they're telling us that for a reason, not just because
23 they don't want to make money today.

24 THE COURT: Thank you.

25 PETER SOUTHWAY: Thank you.

1 THE COURT: William Olin.

2 WILLIAM OLIN: Good morning, and thank you
3 for the opportunity to speak.

4 My name is William Olin, W-i-l-l-i-a-m O-l-i-n.

5 I'm a dairy farmer in Nineveh, New York, a little
6 bit east of Binghamton. I have been since 1980. My
7 wife and I milk 57 cows at the present time. During the
8 time frame of the lawsuit we were between 125 and 155,
9 but we downsized a year ago when I got too old. Older.

10 I have been involved with Dairylea for my entire
11 life. My dad was a Dairylea member. We started our own
12 farm. We were Dairylea members. I am active in other
13 farm organizations and in our church. Dairy farming is
14 the only job I ever wanted, and it's the only job I am
15 lucky to have ever had. And I think it's time to settle
16 this lawsuit, and I'd like to address a few of the
17 things that are involved.

18 My observation of DMS: Before DMS was formed, I
19 had three milk trucks going by my farm. We had
20 Dairylea, we had one from DFA for a neighbor, and
21 another neighbor that was Crowley's. And after DMS was
22 formed, one milk truck picked up all the milk, but the
23 three farms still got their milk check from their
24 original vendor that they were doing business with. So
25 it has lowered the cost of assembling the milk, and I

1 think that's a benefit to us farmers.

2 As far as block voting goes, I think that's
3 absolutely necessary to marketing orders. There's a lot
4 of issues that need to have a decision made that are
5 just administrative stuff, and you are not going to get
6 farmers to take the time to go and cast their vote on
7 mundane stuff, but they still had the opportunity, if
8 they wish, to abstain or to oppose the cooperative's
9 vote in the block vote.

10 As far as conspiring to lower prices, I think that
11 DFA has done the opposite. They've paid a competitive
12 price to what my neighbors have gotten. They have also
13 got premiums from processors for things like quality,
14 for things like rBST-free, some help on hauling. So
15 there are -- that's extra money that comes into our pool
16 of money.

17 And in addition, Dairylea and DFA have programs to
18 help reduce the cost of producing the milk through sort
19 of a buying group kind of thing, so it doesn't matter
20 what your price of milk is, how high it is, if your cost
21 of producing milk is higher yet, you're not going to
22 make money. We have ups and downs in milk prices. Two
23 years ago, when we were getting \$27 for milk, I didn't
24 hear anybody say, "Good job, DFA."

25 The cost of production of milk is not -- meeting

1 the production of milk is not DFA's job. Their job is
2 to market my milk, reliably and competitively, and I
3 think they have done that.

4 It is up to the members of DFA to choose the
5 management and direction of our cooperative, not the
6 court or not the outsiders, and I have been active all
7 my life in cooperatives, and I have never been turned
8 down in an effort to take part and express my opinion.
9 There are some that won't be satisfied with any
10 settlement without doing maximum damage do DFA and, in a
11 good day, put them out of business, and I think that
12 would be a real shame.

13 There is no coercion here in getting me here. I
14 much rather be home planting corn, but I feel strongly
15 that it's time to settle this lawsuit. I am proud to be
16 a member of DFA. Thank you.

17 THE COURT: All right. Thank you.

18 Robert B. Jennison. Roderick, sorry.

19 So, Roderick Jennison?

20 JOSHUA HAAR: Roderick Jennison happens to be
21 a neighbor of ours. He was unable to attend today,
22 but --

23 THE COURT: Okay. So I am going to have to go
24 to the next person, but you are coming up --

25 JOSHUA HAAR: I have here his signed witness

1 and attested proxy.

2 THE COURT: Okay. Well, he needs -- this is
3 for appearing in person. So how about we take you --
4 you are going to be next. We have 12 and 13 are Claudia
5 and Jonathan Haar, and the next person will be David
6 Ward then.

7 JOSHUA HAAR: All right.

8 THE COURT: Is David Ward here?

9 JONATHAN HAAR: We have Dave Ward's proxy
10 also.

11 THE COURT: Okay. So that will move us
12 through.

13 Do you have anybody else's so we will cross them
14 off the list?

15 CLAUDIO HAAR: Yes. He has my proxy as well.

16 THE COURT: Okay. And -- okay. So let's have
17 Jonathan Haar.

18 JONATHAN HAAR: We will go with me first.

19 CLAUDIA HAAR: I'm sorry, what did you say?

20 THE COURT: Well, you told me he had your
21 proxy, David Ward's proxy and Roderick Jennison's proxy.

22 CLAUDIA HAAR: Yes, ma'am.

23 THE COURT: So that leads us to Jonathan Haar.

24 CLAUDIA HAAR: Okay.

25 THE COURT: If you want to speak yourself, you

1 can, but if he has got your proxy, that's the purpose of
2 having him speak. Okay.

3 CLAUDIA HAAR: Absolutely. The proxies are in
4 this notebook, so just for functional -- functionality,
5 Jonathan also has his exhibits in here as well. So may
6 I approach the bench?

7 THE COURT: Sure.

8 JONATHAN HAAR: Good morning, your Honor.

9 THE COURT: Good morning.

10 JONATHAN HAAR: This is Jonathan Haar. That's
11 H-a-a-r.

12 I want to apologize concerning the supplemental
13 briefs. They're a little disheveled, our exhibits, I
14 guess we would call them. If -- if it would be helpful
15 to the Court, we would request that we could rebrief
16 them. We were planning on presenting oral explanation
17 of all of them, but obviously we can't do that in five
18 minutes, so we would make that request.

19 So let me just -- I will start with by way of
20 clarity with regards to the people who are my fellow DFA
21 members. I am in no way disparaging them or my fellow
22 class representatives with whom I am standing in
23 opposition to them as well as the settlement. I respect
24 their positions in their --

25 As I said in my second declaration, which is on the

1 docket -- my copy is not docketed, so I don't have the
2 docket reference for that.

3 I'd like to get sworn.

4 THE COURT: Okay. You may do so.

5 (Jonathan P. Haar was sworn.)

6 THE COURT: Go ahead.

7 JONATHAN HAAR: Okay. I would like to speak
8 to -- with regards to procedure. I am going to state
9 that Mr. Brent Johnson engaged in professional
10 misconduct in misrepresenting the facts of the law on --
11 toward the end of the negotiation process on a phone
12 call. It was the Friday before Christmas, on or about
13 the Friday before Christmas. He basically went on a
14 rant explaining to the -- all the class representatives
15 were on the phone at that point in time. I'm not sure
16 if Mr. Taylor was there or not. But to the best of my
17 knowledge, everyone was there. And he explained the
18 relative merits of settlement over trial, and he said,
19 "If you go to trial, you will get no injunctive relief.
20 You will get nothing on full-supply agreements. You'll
21 get nothing -- you won't get an ombudsperson. You will
22 get nothing on milk testing. You will get no relief.
23 You will get absolutely no relief. You might get a
24 little more money, which all of you said you are not
25 interested in more money."

1 So I confronted him. I said, "Excuse me. You're
2 wrong. That's factually incorrect."

3 He said, "No, you're wrong, but I am not going to
4 convince you by arguing with you."

5 So I said, "No, if I'm wrong, please explain to me
6 how I'm wrong. You have a responsibility there." I
7 said, "You have a prayer of relief in the complaint that
8 clearly lays out and includes the caveat that the judge"
9 -- your Honor in this case -- "could issue injunctive
10 relief as you see -- deem appropriate. Furthermore,
11 injunctive relief issued at trial, they don't deal
12 with -- you would not deal with Mr. Kuney. You would
13 look for remedy and that would be that."

14 So after representing that the -- we would lose at
15 trial -- and you have 150 opt-outs and -- led by Mike
16 Eby, that are pursuing the same claims with attorneys
17 that we have brought to this Court previously, so
18 there's apparently some merit to our antitrust claim.
19 So --

20 Yes, so -- after that call -- and this is all
21 documented in our e-mails, exhibits.

22 Oh, in addition, Mr. Foix and Mr. Dan Smith engaged
23 in the same misconduct. I have shared with this Court
24 how I have been called to Madison County, my home
25 county, to serve jury duty, and the judge explained the

1 case before us and explained how all the evidence works
2 and everything, and he said -- he -- the case was -- it
3 was a burglary, but the person who had done the burglary
4 was not the person on trial. The person on trial never
5 entered the building. The person on trial simply drove
6 the getaway car.

7 Mr. Foix and Mr. Smith did not utter a word the
8 whole time Mr. Brent Johnson ranted and raved about how
9 there's nothing in -- in trial, and then this lie was
10 repeated by class representatives Southway, Aubertine,
11 those in support of the settlement, you know, there's
12 really -- this is the very best we can do because we
13 can't get anything at trial, or we'll only get very
14 little, or -- I feel misrepresenting, obviously
15 misrepresenting the prospects, you know, laying aside
16 whether you win or lose. Obviously you could lose, and,
17 you know, that's a reality. So.

18 See what else did I have.

19 Mr. Taylor references he wanted an audit.
20 Mr. Aubertine referenced the same thing, the ACM
21 specifically. I was dealing mostly with the substance
22 of the settlement, but I felt that extremely important
23 to get that in.

24 So Mr. Taylor and Mr. Aubertine both represented
25 they wanted additional audits. Mr. Genske spoke to the

1 item of the audit and the advisory committee person
2 specifically denied the right to get an audit, no matter
3 what the budget item or, you know, he couldn't use his
4 limited budget to do a limited audit of a particular
5 aspect of the business. No audits, because an auditor
6 would have a responsibility to report wrongdoing is what
7 I realized later.

8 In summary, there were a few things -- the reason
9 the ombudsperson and the -- I don't mean to talk fast
10 but I have five minutes.

11 The reason the ombudsperson and the advisory
12 committee person came into being was because in the
13 Southeast, Mr. Foix, on a conversation, represented
14 that -- represented that there had been a committee
15 formed, an academic committee, a -- an academic chosen
16 by the defendants, an academic chosen by the plaintiffs
17 and an academic chosen by them, and that farmers could
18 bring information to that person, and -- and I asked,
19 "Is this a binding committee?" Mr. Foix represented to
20 me that indeed it was binding because the defendants had
21 signed the agreement so they had agreed to abide by the
22 recommendation of the committee.

23 The way the defendants got out of any commitment
24 there is the money ran out with regards to notifying the
25 farmers, because I called one of the committee members.

1 He told me, "We never heard anything. We never saw what
2 they sent to the farmers. I think they left the fox in
3 charge of the hen house," was the quote.

4 So -- so from that, I said, you know, this idea
5 might have merit. This might be a way that we can
6 bring -- that we might be able to bring about change.
7 That idea does not represent change as this settlement
8 does not represent change, and you will hear and you
9 have heard how this settlement is a step, a first step,
10 a beginning, a -- no, it's a settlement. It closes the
11 door.

12 The caveat that they used in the Southeast to keep
13 information under file is the same one that's in this
14 existing settlement. That's why the information in the
15 Southeast is -- to the best of my knowledge, that record
16 is mostly sealed because of the provision that
17 third-party members who are involved in these agreements
18 could represent that they don't want these agreements
19 disclosed. So functionally, you're not going to get
20 disclosure. And then --

21 Oh, the other thing was the milk testing. I
22 represented -- you know, you had -- we had talked about
23 divestiture. I brought to you, and you will see in your
24 exhibit, the two little milk tubes. Now, if they had
25 gone with the idea I represented, which is extremely

1 easy -- and it's Donna Hall's. I'll give Donna Hall the
2 credit. It's extremely simple. Send two sample tubes.
3 You leave one at every farm, take that one label, run it
4 over the top of the sample tube, and you -- you left
5 that there.

6 Now every farm every time I could create my own
7 record of alleged wrongdoing or I could check it out and
8 find out that, indeed, everything is fine. If there's a
9 spoiled load, I immediately have recourse. You will
10 notice in the adulterated loads, the first caveat is,
11 well, if there's any sample remaining --

12 Now, bear in mind, this is a milk plant that's run
13 by milk supplied by the defendants. They have a
14 compelling reason to make sure that there's no sample
15 left. This whole settlement is based on we're relying
16 on the complete integrity of the defendants, and one of
17 my e-mails I really liked, I quoted Patrick Henry, that
18 "I have no teacher but history."

19 And they're in federal court coast to coast,
20 multiple cases. Apparently there's some integrity issue
21 somewhere.

22 THE COURT: So you're almost out of time.
23 Just a couple more points.

24 JONATHAN HAAR: Yes.

25 So I mentioned milk testing, that to leave those

1 tubes in would destroy a lot of the control because, you
2 know, then --

3 So my summary of substance.

4 This stuff is all in.

5 I wrote -- toward the end of that binder there's 43
6 pages. They're handwritten. Sorry about that. And
7 they are double-spaced, so it's not really that much
8 writing, but --

9 I am just trying to think if there's anything --

10 I represented about the important first step.
11 Professional misconduct. Sorry to think out loud.

12 THE COURT: That's all right.

13 JONATHAN HAAR: And, again, my -- my second
14 declaration, which basically states, "In my declaration
15 I did not mean to -- I did not inform my fellow
16 DFA farmers or farmers that market their milk through
17 DMS are in collusion with regards to the antitrust
18 violations described in the complaint. I respect these
19 farmers as colleagues and recognize their efforts on
20 their farms and for their organization. I do not
21 question their honesty or the genuineness of their views
22 as expressed in their declarations; however, since DFA
23 and DMS have chosen not to open the record of the case
24 and keep the vast majority of the evidence confidential,
25 the declarants' opinions are uninformed by this

1 evidence. I remain convinced that the declarants'
2 position, in addition to the bias and incomplete
3 information they have received from the management of
4 DFA and DMS, taints their objectivity."

5 You will note, your Honor, that actually in -- with
6 regards to the opposition, the vast majority of farmers
7 are actually the defendants. They're members of the
8 board of DMS we have heard from and, in addition,
9 politicians.

10 You have in front of you today the classic dairy
11 problem. You have bankers, lawyers and politicians and
12 processors, which I touch on all that in my -- in my
13 writing, standing before you telling you what dairy
14 farmers need. And I'm encouraging you to listen to the
15 actual dairy farmers that are not delegates of the
16 organization. As far as I know, these --

17 I will leave it there. Thank you.

18 THE COURT: Okay. Thank you.

19 David Galley.

20 DAVID GALLEY: Good morning, your Honor.

21 THE COURT: Good morning.

22 DAVID GALLEY: Thank you for the opportunity
23 to speak.

24 THE COURT: Would you just spell your last
25 name. Yes, good.

1 DAVID GALLEY: My name is David Galley,
2 G-a-l-l-e-y.

3 Along with my wife, Kathy, and my daughter, Sonya,
4 we comprise Silver Spoon Dairy, LLC, of Garrattsville,
5 New York. We formed an LLC with our daughter three
6 years ago, three years after she graduated from Virginia
7 Tech and worked elsewhere. She has a keen interest in
8 dairy cattle and has demonstrated a commitment to the
9 future of our home farm.

10 We milk about 70 cows, ship roughly two million
11 pounds of milk a year. Registered holstein herd, 26,000
12 pound herd average. We raise all our own forage,
13 high-moisture corn as well as all replacement animals.
14 Through a comprehensive nutrient management plans and
15 precision feeding, we strive to employ the best
16 management practices available.

17 In addition to our farm business, my family and I
18 are very active in our community. I serve as an elder
19 in our church, vice chairman of the town planning board
20 in addition to serving as the secretary of South New
21 Berlin Cooperative in South New Berlin, New York.

22 My wife is also active in church, 4-H county, the
23 state holstein groups, and our daughter is music
24 director of the church and very active in 4-H, Holstein
25 Association and dog agility training and competition.

1 To demonstrate my perspective, I would like to give
2 you some background on how I have grown through the
3 dairy industry.

4 I began shipping milk in 1967, nearly 50 years ago,
5 through a small local co-op called Rock Royal Co-op,
6 which was affiliated with Net-co. 1972 I moved to my
7 current location and joined Dairylea.

8 In the early '80s, there were independent handlers
9 aggressively canvassing for milk, and so I left Dairylea
10 and became an independent for a number of years.

11 1986, myself and a group of four others organized
12 the group co-op of 35 producers. Our goal was to offer
13 a buyer consistent supply of quality milk located in a
14 geographic close and easily accessible area. We were
15 very successful in obtaining over-order pricing and a
16 secure market for our milk.

17 We became affiliated with Allied Federated
18 Cooperatives in Canton, and as president of Butternut
19 Milk Group I served on the Allied board of directors.

20 In early 2001, our group, along with South New
21 Berlin and some others, lost confidence in Allied
22 management. When our concerns were not addressed,
23 Butter Milk Group and South New Berlin both left Allied.
24 At the time, we dissolved the Butternut Milk Group, and
25 most of us joined the South New Berlin group. I was

1 appointed to the board of directors, elected to serve as
2 secretary, which I still am today.

3 During my time in both groups, I have been involved
4 in contract negotiations with handlers, and when we left
5 Allied, that is the South New Berlin group, we were able
6 to negotiate a successful three-year contract with a
7 large handler. We were not able to renew that contract
8 at the end of three years, but we were able to, through
9 DMS, market the milk through them with the same terms
10 with a five-year contract. That was the beginning of
11 our marketing agreement with DMS, and the co-op has
12 remained with them today.

13 South New Berlin is an independent group that hires
14 its own fieldmen, general manager and hauler, with
15 contracts with DMS for a producer payroll.

16 During my tenure on the executive committee of
17 South New Berlin, I have been involved in all
18 negotiations and matters with DFA. We meet with the DFA
19 representatives at least annually, or more often if
20 either party feels there's a need. All matters have
21 always been settled in a way that have been equitable
22 and in the best interests of both parties. We are very
23 concerned about having a stable market for our milk, and
24 DFA's been able to provide that stability. Milk
25 marketing is much more complex than it was 30 years ago

1 when we organized our first small group. South New
2 Berlin is an example of successfully working together
3 with DMS/DFA, and in today's milk-marketing climate, we
4 don't feel that we are in a position to negotiate with
5 large processing facilities nor to be on top of
6 day-to-day handling of loads of milk. We need the
7 expertise and strength of a group like DMS/DFA to
8 provide our marketing arm.

9 Much has been brought to light through the
10 Northeast settlement, and February 15th, 2016, our board
11 of directors sent a letter to the U.S. District Court
12 supporting the settlement and asking to expedite the
13 decision. The letter was sent clearly to indicate our
14 position of South New Berlin Cooperative, and that
15 letter, as well as our attendance today, is our
16 initiative and demonstrate our support.

17 My cost of being here today is expensive. Getting
18 our corn planted and beginning hay crop harvest
19 determines the blueprint of our success the next 12
20 months. Right now today would be a good time to be
21 planting corn. Eric Lindberg, our cooperative
22 president, is here with me today, I think indicates how
23 valuable we feel the settlement is and that it should be
24 completed. And we are here with full board support.

25 As an industry, dairymen and DFA need to move past

1 this, settle and strengthen our position to survive the
2 current milk crisis. Our South New Berlin Coop
3 president, Eric Lindberg, and I have met with each of
4 the board members and have their documented unanimous
5 support in this position.

6 We think the people that have been appointed by the
7 Court to be involved with DFA and the settlement can
8 only bring good things to light: more people, more
9 ideas, more integrity.

10 I thank you for the opportunity to speak again, and
11 I hope this brings a different perspective than many
12 others have. Thank you.

13 THE COURT: Thank you.

14 Larry Burgin.

15 LARRY BURGIN: Good morning, your Honor.

16 THE COURT: Good morning.

17 LARRY BURGIN: And thank you for the
18 opportunity to speak today.

19 My name is Larry Burgin. That's L-a-r-r-y
20 B-u-r-g-i-n. I am a dairy farmer from Delhi, New York.
21 Our farm, Mushkoday Farm, is a family business with my
22 sons Jacob and John being the fifth generation to be
23 part of the farm. It started in 1908 by my
24 great-grandparents, John and Jessie Burgin. They milked
25 about a dozen cows.

1 Since that time our dairy has seen tremendous
2 change. Today we are currently milking around 160 cows,
3 producing well over three million pounds of raw milk
4 annually. We also utilize some of the latest dairy
5 production technology utilizing robotics. It is
6 inspiring for me to work on a farm and a family business
7 with three generations working together as my father of
8 80 years of age is still integrally involved with the
9 daily activities of the farm.

10 It has been a privilege for me to be involved in
11 the dairy industry here in the Northeast for the last 36
12 years. It has given my wife and myself the opportunity
13 to raise our five children in a rural, agricultural
14 environment in which they had daily activity -- or daily
15 responsibilities and activities. This, I believe, is
16 something that has benefited them greatly as they have
17 grown into adulthood.

18 My wife, Ann, after our children have grown, is
19 currently a full-time substitute teacher at South
20 Kortright Central School. I serve on the New York City
21 Water Shed Agricultural Council board of directors. We
22 are also parishioners at St. Ann's Roman Catholic Church
23 in Andes, New York.

24 I wholeheartedly believe in the value of
25 cooperatives. My family has belonged to a cooperative

1 for almost a hundred years. My great-grandfather joined
2 Dairylea as a member in 1929. I also credit our farm's
3 relative success to the united practices of a
4 cooperative, and I believe that DFA and DMS are
5 committed to marketing our milk every day of the year.

6 Becoming a Dairylea member myself in 1980, I
7 quickly realized the value of being part of a
8 cooperative as a great way to become informed and
9 educated on the milk industry here in the Northeast.
10 That being said, I always made it a point to develop a
11 relationship with my director and asked them lots of
12 questions.

13 In these last 36 years, I have never asked any
14 questions that I did not have answered to -- to my
15 satisfaction. I can unequivocally say that as a member
16 and a delegate, being part of the -- part of Dairylea,
17 and now DFA, I was privy many times to the decisions
18 that the board of directors and the management team
19 made, and I can also unequivocally say that those
20 members' interests and those of the entire industry here
21 in the Northeast were always at the forefront of all
22 their business dealings.

23 I firmly believe there was no wrongdoing by DFA and
24 DMS at all. The management of the cooperative always
25 has the best interests of the members as well as the

1 entire Northeast dairy industry in the front of their
2 mind. As such, I believe that by this settlement, it
3 will allow DFA to put this lawsuit behind them and move
4 forward to seek new business opportunities that will
5 provide better returns for the members as well as
6 strengthening the milk-marketing environment here in the
7 Northeast for all of us.

8 In my opinion, we face some very difficult
9 marketing and pricing issues here in the Northeast, and
10 we need to, as farmers, utilize our cooperatives and
11 work closely with them now at all times to improve
12 returns back to the farm. There is an acronym that we
13 have all heard before and that is TEAM -- together
14 everyone achieves more.

15 A good friend of mine worked tirelessly his whole
16 adult life to build bridges between people. He always
17 told me that it was better for everyone involved to
18 build bridges rather than to tear one down. In my
19 experience in this industry, when we all work together
20 as dairy farmers, members of a cooperative, we can do a
21 better job marketing our milk, hauling it more
22 efficiently, and obtaining greater returns back to the
23 farm. This is one of the reasons why I support the
24 proposed settlement of this case.

25 I am very aware that some farmers oppose this

1 settlement and believe that having a trial will solve
2 all of their problems. To me, a trial is pointless when
3 you consider all of the intricate details of milk
4 marketing that would have to be discussed in court.
5 Going to trial will not create new markets. It will not
6 obtain better pricing, and it will not reduce our
7 hauling costs. If this lawsuit continues, it will only
8 breed more animosity amongst dairy farmers here in the
9 Northeast and deny farmers the benefit of this
10 settlement.

11 A while ago I heard someone say that when one
12 segment of agriculture says something derogatory about
13 another segment of agriculture, nobody wins. Everybody
14 loses. If we as farmers continue to argue amongst
15 ourselves, we will continue to receive less than
16 potential that is available. I support the proposed
17 settlement and recommend that the dairy industry work
18 together as a team to bring about real and positive
19 changes. Thank you.

20 THE COURT: Thank you.

21 Patty Bikowsky.

22 PATTY BIKOWSKY: It's Patty Bikowsky,
23 P-a-t-t-y B-i-k-o-w-s-k-y.

24 My husband and I are dairy farmers on a farm in
25 Madison, New York. We milk about 80 cows. We have

1 raised our family there. They have chosen to do other
2 professions but still love to come back to the farm.

3 I currently serve as a council member for the
4 Northeast Dairy -- DFA -- Area Council. I have been in
5 that role for about 10 years. Additionally, I serve on
6 the New York Beef Council, the National Cattlemen's Beef
7 Board, and also the American Dairy Association and Dairy
8 Council Promotion Board.

9 I feel very strongly that the co-op is the way to
10 go for farmers to work together. 25 years ago I was an
11 independent. Farmers like to be known as independent
12 themselves. They like to run their own business. They
13 like to be their own boss. And here I was handing my
14 milk to an independent person who could do whatever he
15 wanted, make the profits he wanted, and the more I
16 thought about a co-op, the more I thought this is the
17 way I want to go because then I can have control. I can
18 have a say in how the business is run.

19 So I joined the co-op, became a member. Soon
20 realized I wanted to take a more active role, so I
21 became part of the resolutions committee. That's the
22 part that farmers -- any farmers can bring any issues,
23 any problems, any changes that they want to a
24 resolutions member. The resolutions committee gets
25 together, discusses it, decides what -- what they want

1 for their co-op, and that is passed and becomes part of
2 the resolutions book. So it is definitely a grass-roots
3 effort. I love that part of it.

4 When I had the opportunity to become -- to run as a
5 director, I jumped right at it. I kind of like to have
6 a say in things, and I like to speak my peace, but I
7 like to also understand how things are run.

8 I'm unique as I stand here because I'm the council
9 member that represents the district that Jonathan and
10 Claudia Haar reside in. I take my role seriously, and
11 the first time I met them was at -- we have summer
12 picnics and fall district meetings, and I met them
13 there. They seemed to be very interested in the co-op.
14 We had a long discussion. They said that they would
15 like to run as delegates, and I said, "Well, I can get
16 the information for you how to do it."

17 So in a return phone call I talked to them about
18 how to become a delegate. You can nominate yourself.
19 You can nominate somebody else. And then you -- as long
20 as the person that you nominated accepts it, you
21 become -- you are on the ballot and you can run for any
22 of the elected positions.

23 I expected that the Haars would do that at the next
24 election which was the next year, but they chose not to,
25 which surprised me.

1 So I have made sure that any member I speak to has
2 that opportunity to become a representative, and if they
3 don't want to, if they want to call me and get
4 information -- there are newsletters sent out. We try
5 to be transparent in everything. We -- there's no
6 hidden secrets at our board meetings. Some things are
7 in executive session, but anything that pertains to the
8 members that will help them out, we go out of our way to
9 give that information.

10 I think this settlement will do an even better job,
11 though, with the two representatives that are -- you
12 were talking about. Perhaps somebody doesn't get along
13 with their council member and they feel more comfortable
14 talking to someone else. This will give them another
15 outlet, but it is all about transparency and
16 representation. Frankly, sometimes I don't even get
17 enough people to fill my delegates' positions, and I
18 have to beg people to do this, but farmers are busy.
19 Like they say, we should all be planting corn, but we
20 felt it was important to come here and to speak and
21 encourage you to do the settlement as it stands.

22 I think that this has gone on for so long, it has
23 hindered DFA's ability to work on behalf of the members
24 effectively. It's taken management time and energy away
25 from productive business that could actually help all

1 farmers. It's made it harder for farmers to work
2 together, and in today's milk-marketing environment, we
3 need to all work together instead of against each other.
4 So I urge you to please settle the lawsuit. It needs to
5 end, and we all need to get back to focusing on the
6 things that matter: working together to improve the
7 livelihood of all dairy farmers. Thank you.

8 THE COURT: Thank you.

9 William S. Moody.

10 WILLIAM MOODY: Good morning, your Honor.

11 I am William S. Moody, W-i-l-l-i-a-m S. M-o-o-d-y.

12 My family and I live in Delaware County, New York.
13 I am here to support the settlement of the case of Allen
14 versus the Dairy Farmers of America.

15 Our family has used cooperatives for many years,
16 ever since my grandfather joined Dairymen's League in
17 the mid 1920s, and we felt that's the best way to market
18 our milk. We are currently members of Dairy Farmers of
19 America and have been since our former cooperative
20 joined with DFA.

21 We milk 60 cows on a grass-based system and it
22 works very well for us. Our family of three children
23 grew up on our dairy and are still involved in the dairy
24 industry. My daughter currently owns part of our dairy
25 farm and has cows in it, and we hope to continue the

1 fourth generation on our farm.

2 Because of the small size of our dairy, we depend
3 very heavily on DFA to provide us with services such as
4 marketing our milk, getting us a fair price for our
5 milk, guaranteeing payment for our milk, and providing
6 us with many extra support services to lower the cost
7 for our farm.

8 DFA is a dairy farmer-owned cooperative. All
9 members have equity in DFA, and to continue this lawsuit
10 has the chance of costing the farmer members millions of
11 dollars against the equity in DFA. This is one of the
12 reasons that I am supporting this current settlement.

13 I feel that DFA has always worked in my best
14 interests. I have attended many local meetings to get
15 information and also to vote for DFA delegates and
16 directors at our local meetings. The ballots are passed
17 out at our local meetings and counted by dairy farmer
18 members in a fair manner so that everybody that has
19 wanted to be a delegate or run for director of DFA has
20 gotten to do so.

21 I have actually been a participant in the process
22 of counting these ballots for different districts so
23 that I really don't know any of the members that were
24 running, and I can say that the directors and delegates
25 are all fairly elected by their farmer members.

1 I attended expanded Northeast board meetings where
2 fairly large groups of farmers can get together and
3 discuss any matter that -- of interest and actually
4 interact with the directors and the staff of Northeast
5 DHI -- or Northeast Dairy Farmers of America.

6 I have been a national delegate and attended 13 of
7 our 17 annual meetings and voted for corporate
8 directors. I am also a large user of DairyOne services
9 for the technology they offer and believe they have a
10 great deal of integrity. I have used DairyOne and the
11 former Northeast DHI for over 40 years to test my milk
12 and to provide me with management advice for my dairy.

13 I believe their milk-testing services are the best
14 in the dairy business and work with a great deal of
15 integrity. My milk check has always been very clear to
16 me, and all of the deductions and premiums that I
17 received are broken down and explained on every milk
18 check. And as to that point, for the last several
19 years, I have received an over-order premium based on
20 the quality of my milk, on not using rSBT {sic} on my
21 cows, and this has been a substantial -- on a small
22 dairy like ours, this has been a substantial extra
23 income for us.

24 I believe that this settlement is good and it will
25 provide extra oversight. Our board and our council have

1 fairly large numbers of farms and another person will
2 only add to the benefit of having an extra person take a
3 look at the business we do and offer up advice.

4 I believe the ombudsman will be a positive thing
5 for many of the people that really don't understand all
6 of the things that are going on in our dairy
7 cooperative.

8 For all these reasons, I believe this settlement
9 should be finalized now. Thank you.

10 THE COURT: Thank you.

11 Lisa Knapton. Lisa Knapton. No?

12 LISA KNAPTON. Lisa Knapton, K-n-a-p-t-o-n.

13 I am a first-generation dairy farmer from New
14 Hampshire. I've raised my family -- excuse my voice.
15 I'm nervous -- raised my family on the farm there.

16 I wrote a letter in support of the settlement.
17 Although I understand the arguments of the other side
18 and the frustration, and -- I think from a
19 first-generation farmer perspective, we -- we're
20 planting genetically modified plants. We are using
21 genomics to breed our animals. We are milking our cows
22 with robotics. But we aren't looking at our market
23 price, which is driven in part by policies which were
24 written in the '30s. And I see this case as a
25 beginning.

1 Instead of looking back, I think we should be
2 looking forward at reform, and I see this as a step in
3 the right direction. And that's all I have to say.

4 THE COURT: All right. Thank you.

5 Reynard Hunt.

6 REYNARD HUNT: Good morning.

7 THE COURT: Good morning.

8 REYNARD HUNT: It's Reynard, R-e-y-n-a-r-d
9 H-u-n-t.

10 AUDIENCE MEMBER: Please speak into the mic.

11 REYNARD HUNT: And I am a subclass
12 representative for DFA and DMS subclass. I support the
13 proposed settlement in this case.

14 I grew up on a dairy farm in New Jersey that had
15 been in the family since before the American Revolution.

16 From the time we sold our herd early -- in the
17 early '70s, I have raised dairy replacement heifers and
18 still do so today, and I do some crop farming.

19 I was a physical education teacher for 35 years,
20 and then I co-founded Spring House Dairy with Peter
21 Southway in 2003. During that time, we kept
22 approximately 95 head of dairy cattle, and beginning in
23 around 2005, we started selling most of the milk through
24 DMS.

25 After selling my interest in the Spring House Dairy

1 in 2011, I operated my own dairy herd until August 2013,
2 milked approximately 50 cows, and sold the milk through
3 DMS.

4 I -- as a class representative, I took my role very
5 seriously, evaluated the litigation and settlement to
6 the best of my abilities. I had quite a few discussions
7 with local farmers and some farmers out of the area, and
8 as most everybody agreed, it's not a perfect settlement
9 but most were in agreement that it was a good settlement
10 and it was necessary to make this settlement.

11 Weighing the risks of trial and appeals versus what
12 farmers are certainly receiving from this settlement,
13 concluded that the settlement was the best choice. The
14 main decision was between continuing to fight the
15 defendants and head to trial or whether negotiate a
16 settlement, and I think the latter is the best course.
17 The settlement disregards -- resulted from these
18 negotiations is I think a good one, in my estimation,
19 and it's a good compromise for both sides.

20 THE COURT: Thank you. We'll have one more
21 before the morning, and that -- I mean before our lunch
22 break, and that will be Tim Maxham.

23 TIMOTHY MAXHAM: Good morning, your Honor.

24 THE COURT: Good morning.

25 TIMOTHY MAXHAM: I guess we're about

1 halfway through, and there's some other members from St.
2 Albans Co-op that are going to be after me, but luckily
3 they get a chance to have a break before they come up.

4 THE COURT: So let's just have your spelling
5 of your last name for the record.

6 TIMOTHY MAXHAM: Yes. Timothy Maxham,
7 M-a-x-h-a-m.

8 THE COURT: Thank you.

9 TIMOTHY MAXHAM: I am going to briefly go back
10 roughly a hundred years just to say St. Albans Co-op, up
11 in St. Albans, Vermont, was created back in 1919. In
12 the year 1920, my mother was born, and it was stated
13 earlier this morning, you know, number of farms. There
14 are roughly 25,000 farms in the state of Vermont. By
15 the year 1950, we were down to 15,000 farms, and today,
16 in the year 2016, Vermont farmers are -- roughly
17 approximately 850 of us. And so, you know, we all know
18 what's happening, but yet we are still producing food
19 and fiber around the country for expanded population.
20 We have our trials and tribulations, and we're
21 addressing one of those here today.

22 It's been a long process, and I'm here to speak in
23 favor of the settlement. I think it's gone on long
24 enough. It wasn't settled completely the first time
25 around, and there has been stated earlier there have

1 been updates to that to make more protection for some of
2 the people that were looking and considered some
3 inequities in the market system and how we operate.

4 I have seen a lot of changes since I was born in
5 1953, and I was born on a small dairy farm in
6 Morrisville, Vermont, and I think I had milk in my blood
7 veins because it's all I ever wanted to do was be a
8 dairy farmer.

9 In the late '50s, you know, a lot of changes that
10 we have seen progress, and it started, you know, it -- I
11 can still remember my mother and father milking into the
12 milk cans. And about the late 1950s there was a push,
13 United Farmers Co-op, I believe at the time we were
14 involved with, you know, bulk tanks and updating. We
15 did put in a bulk tank at that time. I remember, you
16 know, remodeling the farm, probably a couple old horse
17 stalls that we took out and put in a bulk tank.

18 Unfortunately, two or three years later, cows were
19 sold. I didn't have anything to say about it. But
20 that's the way it goes. We seen that attrition, and we
21 can't say the marketplace has always driven it, you
22 know. It's been other things that made the economics
23 unviable for farmers to continue or they reached an age
24 and they couldn't pass it on, as some people have stated
25 here, that they have -- the farm has gone, come down in

1 the family in generations.

2 So I lost my opportunity to farm the family farm.
3 My parents and I, and my other siblings, moved to South
4 Hero, which is in Grand Isle County, on beautiful Lake
5 Champlain, just 25 miles away from here, in 1966.

6 In 1967, at the age of 13, I started working for a
7 neighbor farm and worked there for 10 years through high
8 school, put myself through two years of tech college at
9 Vermont -- VTC in Randolph, went back to the farm and
10 continued working there until 1977, and I decided it was
11 time to stretch out and operate it myself.

12 There was a neighbor farm that had gone out earlier
13 and barn was vacant. I asked him if I could rent the
14 place, and so I'm coming up on the anniversary Memorial
15 Day weekend 1977. I was a member of the St. Albans
16 Co-op. I paid my dollar to buy a share, and I became an
17 operating member of St. Albans Co-op.

18 Over the years, we have seen things continually
19 change. Shortly previous to that, Grand Isle -- several
20 towns, Grand Isle Creamery, they decided to disband or
21 join with St. Albans Co-op. They did so. Shortly after
22 that, there were some other smaller co-ops that decided
23 that they needed to make a change, and they changed and
24 joined with St. Albans Co-op.

25 Over the years we saw some membership grow. St.

1 Albans Co-op basically was just Franklin County. Now we
2 have members in New Hampshire, all of northern Vermont,
3 and some over in New York. We have had to expand to
4 stay viable and offer the services for the farmers to
5 compete and market their milk.

6 One of the reasons that I think it's time for the
7 settlement to be made and continue on, as has been
8 expressed earlier here, you know, I kind of get up in
9 the morning and there's only so much I can do in a
10 24-hour period. Sometimes it's kind of cut and dried;
11 other times we have issues that we want to take care of
12 and certain circumstances that come about that it just
13 doesn't allow it. You're out making hay and it rains,
14 you're all done. We talked about planting corn. We
15 don't usually get it done in a day, but we usually get
16 it done. But when something like this has taken this
17 long -- and we all know that the wheels of justice
18 sometimes turn slow, and we need to continue and move on
19 and look forward, and one of the things -- a couple of
20 things: Why am I a co-op member?

21 I guess at the time it probably -- there weren't
22 too many alternatives, but I have been a strong
23 supporter of the co-op ever since I joined. I know my
24 board of directors. I know management. I am only 30
25 miles away from the plant. I don't have to worry about

1 marketing my milk. It's taken care of. I receive a
2 milk check. As talked about, we receive premiums on
3 qualities and that type of thing. And I just want to
4 relate that balancing milk and taking care of it, you
5 know, 365 days a years, individually I can't do that,
6 and I know the runnings of co-op and marketing milk and
7 taking care of a perishable product. When a lot of
8 times our customer, the co-op customer, is closed for
9 the weekend or long holidays, the use of milk goes down,
10 somehow that product is taken care of.

11 And we have a co-op member in Lamoille County, in
12 the town of Morrisville where I was born. They
13 operate a -- probably a small, medium-sized farm, but
14 they have personally gotten into value-added product.
15 They produce cheese on the farm. And talking with a
16 fellow there one day, he says, "Well, we probably
17 produce cheese two or three days a week. We probably
18 take 600 pounds of milk." I don't know how much milk
19 they are milking, but -- or making, but they have to
20 have an avenue for the rest of that product. They don't
21 have to worry about it because the milk truck is picking
22 up their milk every day. They're able to do what they
23 want to do in trying to create a market for small amount
24 of it, make a value-added product and make some extra
25 income.

1 THE COURT: So we are right about at your
2 time. A couple last thoughts?

3 TIMOTHY MAXHAM: Okay. The other thing is
4 that I have been involved in town government for a long
5 time. Your Honor, you're familiar with Vermont so, you
6 know, town meeting. I have been town moderator for 30
7 years in the town of South Hero, and there's only so
8 much business we can take care of in a day. We have an
9 agenda, and we take care of things. And also, we
10 operate on Roberts Rules of Order, and, you know, some
11 questions, they require larger percentage to move on to
12 certain things, and some of those, you know, require
13 two-thirds vote consideration.

14 As I understand it, we had six plaintiffs. It was
15 increased to nine. We have six of those that are in
16 favor of the settlement. We are at that magic number of
17 two-thirds. Let's settle the question and move on to
18 greater things and look forward to the future. Thank
19 you.

20 THE COURT: All right. Thank you.

21 We will take our noon break at this time, and we'll
22 come back at one o'clock. You shouldn't leave things in
23 the courtroom when you exit, and I understand Clement
24 Gervais might have to leave early, so you are actually
25 number four when we come back, so I think we should be

1 able to get to you, but you might want to talk to the
2 people ahead of you if that isn't going to work for you.

3 And anything from counsel before we take our break?

4 MR. PIERSON: No, your Honor. Thank you.

5 MR. KUNEY: Not here, your Honor.

6 (Court was in recess at 12:00 p.m.)

7 (The following was held in open court at 1:10 p.m.)

8 THE COURT: We are back on the record in Alice
9 Allen versus Dairy Farmers of America, and we are in our
10 fairness hearing. And the next speaker is Patrick
11 Howrigan.

12 PATRICK HOWRIGAN: You want the spelling on
13 the name?

14 THE COURT: Yes, please.

15 PATRICK HOWRIGAN: H-o-w-r-i-g-a-n.

16 Good afternoon.

17 THE COURT: Good afternoon.

18 PATRICK HOWRIGAN: My name is Patrick
19 Howrigan. My wife, Paula, and I have been proud members
20 of the St. Albans Co-op since 1977. My two sons
21 represent seventh-generation dairymen in Franklin
22 County, Vermont.

23 I believe that myself and my fellow dairymen can
24 accomplish more when we work together than we can
25 working alone. Our board of directors, management and

1 staff are open, accessible and helpful to explain if we
2 have any concerns. I am confident that when our
3 directors put their boots on in the morning, they face
4 the same concerns for their families and farm management
5 as we do.

6 St. Albans Co-op has a long tradition of helping
7 membership with financial programs to assist with
8 purchasing supplies like fertilizer, seed, feed, and
9 storage supplies. These programs are available to all
10 members and we can all benefit.

11 When St. Albans Co-op became members of Dairy
12 Farmers of America and DMS, it was a good move for our
13 patrons. We now have the benefit of financial strength
14 that we can deal with larger customers. We can work
15 together to service markets that would have been beyond
16 our reach. We now have hauling advantages that can help
17 produce premiums for our membership. DMS has the
18 ability to send the closest milk available to the
19 nearest market. Instead of competing relationships for
20 market share, we now work together to benefit us, the
21 farmer owners.

22 We at St. Albans have made a major financial
23 investment in our production facilities. We now have
24 the capacity to service milk in the Northeast while also
25 contributing as team players. Our relationship with DFA

1 and DMS requires major trust of all involved. The
2 settlement in Allen versus Dairy Farmers of America is
3 good for all. This settlement provides a structure to
4 protect and guard this trust. It will protect and
5 provide a solid voice for our member dairy farmers. The
6 settlement will provide the legal outline to solve
7 problems and build trust as we move forward. I support
8 the settlement. I would believe it will be good for our
9 family and good for my fellow dairymen.

10 I feel the Court did a good job of explaining the
11 new aspects of the settlement which includes significant
12 elements that could really benefit the dairy industry.
13 The concept of having a farmer ombudsman is very
14 compelling to me. It could go a long way in giving
15 dairy farmers a new type of mediation mechanism as well
16 as additional peace of mind that DFA and DMS are
17 conducting business in the best interests of the dairy
18 farmer members.

19 The advisory council member will also provide
20 benefit. There will be an additional advocate for
21 farmers and through this role could suggest new ideas to
22 DFA and DMS to improve dairy farmers' bottom line.
23 Overall, these new positions will go a long way in
24 demonstrating and verifying transparency and respect
25 within DFA and DMS.

1 In addition to the new positions listed above there
2 and other benefits to the settlement agreement, the
3 financial-disclosure and milk-testing provisions should
4 provide additional assurance to dairy farmers.

5 Finally, I believe the theme of this settlement is
6 to continue to grow trust and respect between DFA/DMS
7 and the dairy farmer members. All the protections
8 included in the settlement go a long way towards
9 achieving that goal. I feel it is time to enforce the
10 settlement and allow it to be the voice of trust and
11 protection for our dairy farmers. This settlement gives
12 us the tool box to protect and enhance that trust.

13 Thank you.

14 THE COURT: Thank you.

15 Bill Rowell.

16 BILL ROWELL: Good afternoon, your Honor.

17 THE COURT: Afternoon.

18 BILL ROWELL: My name is Bill Rowell,
19 R-o-w-e-l-l.

20 My brother, Ryan, and I operate Green Mountain
21 Dairy Farm in Franklin County, Vermont. We are members
22 of the St. Albans Cooperative Creamery. We milk 950
23 cows and receive quality awards for the milk we produce.
24 Last year our production exceeded 27 million pounds.

25 In an effort to raise the bar for agriculture, we

1 have hosted tours of our farm and digesture operation
2 for more than 22,000 visitors over the past several
3 years. Our objective is to educate the consumer, show
4 them where their food comes from, let them observe the
5 routine practices on today's farm, and see firsthand how
6 cattle are housed, fed and cared for. It's been a big
7 success.

8 This August we will host Vermont Breakfast on the
9 Farm, an event sponsored by the Agency of Agriculture
10 and the University Extension Service. I have been on
11 the state board of advisers for University Extension for
12 the past six years. We are told to expect a crowd of
13 more than 1,000 people. Yet here today I can see those
14 efforts being overshadowed by negative press. This
15 disturbs me. It comes as a detriment to the image of
16 the dairy industry that we are trying to improve and to
17 our livelihood and every farmer here.

18 I believe that settling this matter would be in
19 everyone's better interests. I did attend the previous
20 two hearings. I would note that your seating in here is
21 much more comfortable with the cushions.

22 One of the two key words here today is cooperation.
23 The milk market is highly sensitive to pricing, product
24 quality, consumer confidence and/or public trust.
25 Presently U.S. agriculture finds itself at a real

1 disadvantage in the global marketplace. The strength of
2 the U.S. dollar alone creates an obstacle for
3 competitive sales.

4 In addition, the supply of milk currently exceeds
5 market demand. As a result, milk is being dumped for
6 land application, another negative image for our
7 industry.

8 The proposed requirement of introducing new
9 positions, ombudsman and advisory council member as part
10 of DFA's counsel, I find that to be highly positive and
11 it does several things of import. First, it serves to
12 improve clarity by offering a direct link to
13 information. Second, it creates a means of mediation to
14 resolve issues before they become a tumultuous problem.
15 Third, and key to the entire process, serves to increase
16 transparency.

17 I would also note that transparency lays bare the
18 responsibility of all parties involved, not just that of
19 the cooperative itself. St. Albans and DFA have
20 achieved a good working relationship over the years,
21 something which has increased benefits to both
22 cooperatives and their producer members. I would like
23 to see this relationship continue.

24 As members, we currently enjoy programs which
25 otherwise might not exist. There are a number of

1 examples. One is that of collaborating for market milk
2 and maximize premiums rather than compete with each
3 other for the markets. Another recognizes
4 transportation efficiencies.

5 Since the revised settlement was served to promote
6 a good working relationship between the cooperative and
7 its producer members, I am hopeful that a settlement
8 agreement can be reached today. While some may think it
9 fitting for the big corporation to pay, and by doing so
10 find that it serves justice, they would be failing to
11 recognize this as a burden shouldered by farmers, the
12 producer members of the cooperative.

13 \$50 million settlement, there's no doubt that it
14 will take time for the industry to get beyond the
15 negative press resulting from this action. Therefore, I
16 ask that you end it today and allow that work to begin.

17 My family has been in agriculture in this country
18 since 1637, and we have had to cooperate to get here
19 today. We're going to have to cooperate to move forward
20 tomorrow. Let's get started.

21 THE COURT: Thank you.

22 BILL ROWELL: Thank you.

23 THE COURT: Wayne Hurtubise.

24 WAYNE HURTUBISE: Thank you, your Honor,
25 for allowing me to speak. My name is Wayne Hurtubise,

1 H-u-r-t-u-b-i-s-e.

2 I own and operate a dairy farm in Richford,
3 Vermont, which is in Franklin County, with my two
4 brothers, a son, and nephews, which are the fourth
5 generation on this farm. We milk 800 cows. We market
6 24 million pounds of milk a year. We have been a member
7 of St. Albans Co-op since 1982, which is a
8 member-governed cooperative committed to providing
9 service, stable markets, and the greatest return in
10 profits to our members.

11 I am here today on my own accord to explain why I
12 am in support of the Northeast Dairy lawsuit settlement.
13 Working with DFA/DMS gives the St. Albans Co-op members
14 security -- security, excuse me, with large milk
15 customers in maximizing premiums versus competing for
16 markets against them.

17 The key aspects about this settlement are:

18 The farmer ombudsperson who will listen and
19 investigate any farmer's disputes between DFA and DMS.

20 An advisory council member, which will allow --
21 which will -- excuse me, advocate for farmers with DFA
22 and DMS and promote better pay prices, net income, and
23 enhance equity for them.

24 Milk tested. For the next 10 years, DFA and DMS
25 will not acquire a controlling interest in the

1 milk-testing company its farmers use, which is DairyOne.
2 In addition, any concerns regarding milk-testing
3 accuracy will be brought forth to the farmer
4 ombudsperson who will attempt to mediate any disputes.

5 Adulterated milk, which is farmer's milk found
6 unacceptable for milk processing plants. DFA and DMS
7 will notify the affected farmer within three hours. At
8 farmer's request, testing will be done at an independent
9 laboratory.

10 These provisions are all changes from the original
11 settlement which will provide added assurance that DFA
12 and DMS are serving in the best interests of their
13 members.

14 In closing, it would take a considerable amount of
15 time for me to explain all the benefits and member
16 programs that has helped our farm in the 36 years we
17 have been with the St. Albans Co-op. I believe that
18 this settlement is fair and see no need to go to trial.
19 Thank you.

20 THE COURT: Thank you.

21 Clement Gervais.

22 CLEMENT GERVAIS: Thank you. My name is
23 Clement Gervais, G-e-r-v-a-i-s, and I am in support of
24 the settlement.

25 I farm in Bakersfield, Vermont, with three

1 brothers, one niece, and my parents. My family milks
2 around 1800 cows which produce approximately 50 million
3 pounds of milk a year. My father started farming in
4 Bakersfield in 1960, and in 2013 we had the honor of
5 being named Vermont Dairy Farm of the Year.

6 I am a member of the -- I am a member of the
7 independent St. Albans Cooperative Creamery and have
8 been for over 30 years. There are a few reasons I
9 choose to ship my milk to St. Albans Co-op. I have
10 always enjoyed the transparency of our co-op. My family
11 has always been able to talk to the staff, the CEO, or
12 any of the farmer directors whenever we need to. One
13 example of this is any time our farm has had questions
14 about a quality test or solids test that could affect
15 our pay price, staff has always listened to our concerns
16 and retested to ensure accuracy.

17 Oftentimes my busy schedule does not allow me or
18 many other farmers to be involved or kept up to date on
19 important issues. The St. Albans Co-op has always been
20 a consistent and fair voice for its farmers. Whether it
21 is for rule or policy changes in our industry or any
22 potential concerns for its farmers, I have always
23 appreciated this fair representation.

24 The St. Albans Co-op is absolutely essential to my
25 family's success at producing and selling milk. I rely

1 on my co-op to market my milk and to do so profitably.
2 Milk co-ops are farmer owned so if we do not find a
3 profitable home to our milk, then all of its farmers
4 lose money.

5 St. Albans has worked with DFA and DMS to gain
6 efficiencies in the collection, handling and balancing
7 of our milk. This relationship is a positive one to
8 gain trucking efficiencies as well as improving the
9 balancing of our milk. At times such as now, when our
10 milk shed has extra milk, we do not undercut each other
11 to find a home. That would only lower the sell price
12 more hurting what the dairy farmers actually get paid.

13 I would like to mention a few of the reasons I
14 support this settlement. I really like the idea of
15 adding a farmer ombudsperson. This will give more
16 trust, transparency, as well as a way to improve
17 communications. The advisory council member will also
18 create a valuable mechanism to mediate any concerns.

19 I feel the settlement is not an end; it is the
20 beginning of better communication that will benefit all
21 the farmers. I also like the new milk-testing
22 provisions. All farmers get paid according to the fat
23 and protein tests of our milk. Additional testing will
24 help ensure that our farmers are getting paid fairly.

25 Another reason for supporting this settlement is to

1 secure my co-op's financial responsibilities. In the
2 last couple of years, I have been part of the St. Albans
3 Co-op equity committee. Part of this committee's
4 responsibility is to make sure the co-op has a strong
5 equity position. This will enable us to grow or
6 diversify when it's profitable for its farmers.

7 St. Albans' financial responsibility for paying
8 forth this settlement is an unknown amount unless the
9 settlement is approved.

10 The last reason for supporting this settlement is
11 to avoid additional attorneys' fees. If not settled,
12 the extra costs for attorneys will only hurt all
13 farmers. It's time to settle this lawsuit so we can
14 concentrate on the many important financial needs to
15 ensure a strong co-op and successful farmers in it.

16 I want to thank you for your time and the
17 opportunity to speak today and hope you consider my
18 views to approve this settlement.

19 THE COURT: Thank you.

20 Paul Stanley.

21 PAUL STANLEY: Good afternoon.

22 THE COURT: Good afternoon.

23 PAUL STANLEY: My name is Paul Stanley,
24 P-a-u-l S-t-a-n-l-e-y.

25 And, your Honor, I know that I cannot wear a hat in

1 this courtroom, but I would like to use this as a prop
2 because any good farmer, dairy farmer, cannot go out of
3 the barn without his hat. And I'd also like to add and
4 point out that there's a Jersey cow on this hat. She is
5 one of the nine million plus cows that we have in this
6 country, and I believe, and my colleagues know what I'm
7 going to say, with St. Albans Co-op, that what she
8 produces represents what we need to be producing to sell
9 our product and get out of the bind that we're in with
10 our surplus, and that is high components in our dairy
11 products.

12 And getting to the reason that we're here today:
13 I, like Clement, live in Bakersfield, Vermont, with my
14 wife, who runs a 30-cow dairy farm with my daughter, who
15 works off the farm; and our 60 registered Jersey and
16 heifers produce a high-component milk that is shipped to
17 St. Albans Cooperative Creamery, which we have done
18 since our dairy was established in 1985.

19 Paulin Dairy was designed to operate with an
20 off-farm income, which dairies of this size typically
21 must rely on. One of my off-farm incomes was acting as
22 a dairy inspector with the State of Massachusetts,
23 giving me much insight into the fluid milk marketing in
24 the Northeast Federal Market Order.

25 The lawsuit of Allen versus Dairy Farmers of

1 America, Dairy Marketing Service, needs to be settled,
2 period. And I repeat, it needs to be settled. And,
3 your Honor, in listening to the comments, we always have
4 a take-home message, and I hope that the take-home
5 message that you are hearing today from the folks that
6 are testifying is the settlement of this suit.

7 As the suit drags on, it is also dragging our
8 milk-marketing abilities down with it. It is
9 essentially a fight among dairy farmers for a fluid
10 market we no longer have in the Northeast Order. This
11 has pushed more of the milk produced into this order, to
12 the Class IV milk powder market, which is very low
13 return to the dairy industry and is only a place to
14 dispose of milk we do not have a market for in the
15 Northeast or the U.S. This pushes the milk plant
16 capacity to the point where milk has to be disposed of
17 in our on-farm nutrient cycling systems.

18 The settlement of this lawsuit would allow St.
19 Albans Cooperative and the rest of the Northeast, the
20 national milk market, to move forward with some
21 innovative, out-of-the-box ways to market our milk.

22 If only half the time and money that has been spent
23 on this lawsuit were put toward marketing and promoting
24 our dairy products, we would not have the oversupply of
25 milk that we have in the marketplace today. Instead, we

1 would have healthier people living on a healthier
2 planet.

3 Thank you for your time and consideration.

4 THE COURT: Thank you.

5 Bryan Davis.

6 BRYAN DAVIS: Good afternoon, your Honor.

7 THE COURT: Good afternoon.

8 BRYAN DAVIS: My name is Bryan Davis,
9 B-r-y-a-n D-a-v-i-s.

10 I want to start off by thanking you for giving me
11 the opportunity to testify in your courtroom today. I
12 have never testified in court before, or anywhere else,
13 as a matter of fact, so please bear with me.

14 Our farm is located in Derby, Vermont, which is
15 located directly on the Canadian border in northern
16 Vermont. That part of the state is also referred to as
17 the Northeast Kingdom. I farm with my wife, a son,
18 daughter-in-law, and I just had my first grandson born
19 five months ago. He will be the fourth generation on
20 our farm.

21 We milk 135 cows and produce about three million
22 pounds of milk a year. We also raise the same number of
23 replacement stock. We also tap 4500 maple trees, and
24 we're just coming off the best season we have ever had
25 in the 60-year history of our maple business.

1 I have read the proposed settlement, and I want to
2 thank all the parties involved. You can tell they put a
3 tremendous amount of faith, effort and thought into it.

4 Almost 40 years ago my father and mother helped me
5 buy the neighbor's farm. My dad was always a member of
6 a co-op. He was even a director for Cabot Creamery for
7 15 years before Agri-Mark bought the co-op. I have been
8 a co-op member myself for my entire farming career,
9 first at Cabot and now at St. Albans. I switched to
10 St. Albans because I thought they were very transparent
11 and that the CEO and management team were only a phone
12 call away.

13 I was very fortunate 20 years ago. I was elected a
14 director of St. Albans Co-op. It's a position I still
15 hold. I believe co-ops are a very important part of our
16 industry. I belong to a co-op because it allows me to
17 sleep better at night knowing my milk is going to be
18 picked up in the morning and that I'm going to receive a
19 fair price for it. I feel if I was an independent
20 producer and shipped directly to Dean Foods or Hood, I
21 would wonder and worry that I might receive a phone call
22 saying that they wouldn't need my milk this coming
23 weekend or over an upcoming holiday.

24 Back in the '80s, St. Albans Co-op was very
25 instrumental, along with others in the industry, in

1 establishing the Northeast Dairy Compact. It was a
2 pricing formula to help us with low prices that we were
3 receiving back then. It worked, and it was the envy of
4 many other parts of the country.

5 My question was, did Dean Foods or Hood help us get
6 that pricing formula? They did not. It was co-ops made
7 of dairy farmers, and that's what helped us get that
8 Northeast Dairy Compact.

9 Quick comment regarding the component the
10 milk-testing sampling in the settlement. I have been on
11 the quality committee at the co-op, you know, St. Albans
12 Co-op, since I was elected, and I'm now chairman of the
13 quality committee, and all of those years I can only
14 remember two or three times where a member had a
15 complaint about milk testing, and once we brought those
16 producers to the table to meet with our quality
17 committee and the lab technicians, we didn't hear
18 another peep out of 'em. We just needed to get them in
19 to the office, and we needed to educate 'em; just needed
20 to get 'em off the farm and educate them about the
21 process.

22 St. Albans Co-op has been a partner with DFA and
23 DMS for many years now. I believe the partnership has
24 worked very well and has benefited the membership of
25 both organizations. I think this lawsuit has been a sad

1 chapter in the lives of dairy farmers. It has pitted
2 dairy farmers against dairy farmers. Every farmer --
3 every dairy farmer across the U.S. is suffering right
4 now due to our low milk prices. I believe it is more
5 important now than ever for dairy farmers to unite and
6 work together, whether it's through our co-ops, National
7 Milk, farm bureau or any other organization. The time
8 is upon us that we need to speak as one.

9 I am very much in favor of this proposed
10 settlement, and I would like to ask the Court to support
11 it as well.

12 THE COURT: Thank you.

13 BRYAN DAVIS: Thank you.

14 THE COURT: Connie Menard.

15 CONNIE MENARD: Good afternoon,
16 your Honor.

17 I, like Bryan, have never testified before so
18 please bear with me also. And I really want to thank
19 you for the opportunity to speak today. I was very
20 excited to know that -- that I was allowed to do so.

21 THE COURT: If you just would spell your last
22 name.

23 CONNIE MENARD: Yes. My name is Connie
24 Menard, M-e-n-a-r-d.

25 THE COURT: And I should just say for the

1 record, testimony is usually when you are under oath, so
2 you are making comments.

3 CONNIE MENARD: Okay.

4 THE COURT: So anybody who is worried about
5 testifying, don't -- doesn't need to worry about that
6 because you are making comments, but you won't be
7 considered testifying unless you are under oath. Okay?

8 CONNIE MENARD: Okay, thank you, your Honor.
9 I have learned something today.

10 My family has a dairy farm in Moores, New York, and
11 we are members of St. Albans Cooperative Creamery, and
12 we have been just since 2006. Before that, we belonged
13 to a cooperative that had decided to dissolve, and when
14 we began our search for a new cooperative, we had many
15 options available. As a matter of fact, we were courted
16 quite heavily by several of the co-ops. We chose
17 St. Albans because of the smaller size of the co-op, the
18 transparency of the management and the finances, and
19 also the equitable treatment of all of its members.

20 Your Honor, my husband and I began our farm in
21 1986. Last year we hit a milestone as we became a
22 limited liability company, and we brought our son and
23 his wife into the business legally through lawyers and
24 everything. Their children are -- my grandchildren are
25 the third generation on our family farm. We have 85

1 milking cows and 75 young stock. In today's standards,
2 we would be considered a fairly small farm.

3 Seven miles away, my brothers have a fairly large
4 farm. We work together occasionally for the good of
5 both farms, and it helps us both to be more profitable.
6 The size of their operation allows them to realize cost
7 efficiencies and timeliness with field work that they
8 pass on to us.

9 I believe that the relationship between St. Albans
10 Cooperative, DFA and DMS are a lot like the relationship
11 our small farm has with the large farm. Each remains
12 autonomous in their finances and leadership. DFA opens
13 up marketing opportunities for us, and by working
14 together, we can serve our customers more efficiently,
15 therefore adding to our margins. We are able to use our
16 new powder plant to its best capacity, and we
17 collaborate on milk hauling both from the farm and to
18 the customers.

19 There are benefits for their producers that they
20 make available to our producers as well. Dairy
21 cooperatives are a great asset to producers, and when
22 cooperatives work together, everybody wins.

23 Your Honor, there are dairy producers that know
24 nothing about their co-op. They do not ask questions.
25 They do not understand how a cooperative works or about

1 how their milk is marketed, and some farmers are okay
2 with that. They just want to farm and get a check and
3 it is what it is. I'll be honest with you. I was in
4 that position at one time. When we purchased our farm
5 we had a big fat debt and a young family, and I just had
6 to farm, but it came a point in time when I realized
7 there was part of the business that I needed to learn
8 more.

9 Some farmers feel that their cooperative is out of
10 reach. Perhaps the only contact they have with their
11 cooperative is the man or person who picks up their
12 milk. They may want to know more but they don't know to
13 ask or where to go for answers. They may be afraid to
14 ask questions for fear of sounding ignorant or
15 accusatory. They may be too shy to speak up at
16 meetings, or maybe they have asked questions at some
17 point but never really got a clear answer.

18 If these farmers had had someone to go to that was
19 easily accessible, an outside person whom they could
20 trust, maybe they would understand more how the co-op is
21 structured, how it is managed, feel more like it is a
22 part -- like they are a part of it, and get more
23 involved.

24 The suggested appointment of an ombudsperson as
25 proposed in this settlement would be a perfect fit for

1 farmers in this scenario. They could go to this person
2 to confirm or deny rumors that they heard and would
3 hopefully realize that those who say the co-op is
4 against them are wrong. As their questions get answered
5 and they become more comfortable within their
6 organization, they will realize that the co-op is
7 actually an extension of their own business.

8 Another piece of this settlement that I appreciate
9 is the addition of the advisory council member. On our
10 farm is always a positive experience to have someone new
11 look at our operation, a fresh set of eyes and new ideas
12 to bring better plans and practices that could possibly
13 lead to more profit. This position will bring value for
14 sure.

15 Our farm family believes in our cooperative. We
16 have a deep trust and faith in the leadership and are
17 aware of how much it enhances our business. I truly
18 believe that every dairy farmer should be able to
19 experience the same peace of mind. Putting this
20 settlement behind us, along with the changes proposed,
21 will help to make this happen. Thank you again,
22 your Honor.

23 THE COURT: Thank you.

24 Mark Magnan.

25 MARK MAGNAN: Good afternoon, your Honor.

1 THE COURT: Good afternoon.

2 MARK MAGNAN: Thank you for the opportunity to
3 be here. My name is Mark Magnan, M-a-g-n-a-n.

4 I farm in Fairfield and St. Albans, with three
5 brothers and my parents. I farm on a farm in Fairfield
6 where my grandfather emigrated from Canada and my father
7 was born in the farmhouse that we have today almost 90
8 years ago.

9 In talking to my father this morning, we were
10 talking about things that was going on today and what we
11 had to do. Amongst planting corn and fixing fence, I
12 also stated I was coming to this hearing, to which he
13 almost interrupted me saying anything else, and he said,
14 "That should be front and center." He said from what he
15 knows about it, people need to go to these and put this
16 behind us.

17 My father told me a couple of stories about when he
18 started farming. He could relate back to the '30s, '40s
19 and '50s, and he said there was no communication with
20 their milk handler back then. Today, as he knows, we
21 get production information from our co-op daily on our
22 iPhones, lab results, and many other programs that we as
23 dairy farmers can take part of. My father was also one
24 of the driving forces behind me to becoming a director
25 of St. Albans Co-op.

1 As director of St. Albans Co-op, I am very proud of
2 the work that we at St. Albans and DFA collaborate
3 together with. When we work together, such as getting
4 market premiums out of the marketplace, it makes much
5 more sense to go to milk buyers as one unified voice
6 rather than two or multiple. We can garner more
7 premiums from the marketplace, and that is what --
8 exactly what DMS does.

9 We also gain efficiencies in transportation. For
10 instance, if you have a DFA farm and a St. Albans farm
11 on the same road, we have come up with programs where
12 one truck will pick up both farms, even though they're
13 not a member of the same co-op, to save and garner
14 trucking efficiencies. That means real returns for
15 dairy farmers. This gives the independence to the
16 farmers. They can still remain with whomever they are
17 loyal to, but yet we can gain efficiencies.

18 Building strengths helps build good relationships
19 with our customers as well. They know -- farmers know
20 they can rely upon the co-op, and today that is exactly
21 what farmers need. Thank you.

22 THE COURT: Thank you.

23 Tim Magnant.

24 TIMOTHY MAGNANT: Good afternoon,
25 your Honor.

1 THE COURT: Good afternoon.

2 TIMOTHY MAGNANT: Thank you for the
3 opportunity to speak.

4 My name is Timothy Magnant, M-a-g-n-a-n-t. I own a
5 farm in the beautiful area up in northern Vermont,
6 Franklin. I border on the southwest side of the village
7 which provides its challenges with -- I have to have a
8 lot of community action to keep -- make my farm work
9 with keeping the neighbors happy, and farming's
10 something I have enjoyed all my life.

11 I farm there with my wife, Martha, and my two
12 now-grown and moved-on daughters, Danielle and Desiree,
13 who grew up with the farm values which are very
14 important.

15 The one who told me -- taught me most of my farming
16 experience was my father who took Mark Magnan, the
17 previous speaker's -- he took my father's place on the
18 board of directors for the St. Albans Co-op. And I
19 learned a lot about my co-op through my father.

20 They speak for us nationally. They speak for us in
21 the state on policies, and they provide a lot of support
22 for our farmers other than milk marketing. Whether it
23 be water quality issues or other issues, our co-op is
24 very important to us for being our voice and a big
25 voice.

1 One of the things that I've really appreciated is
2 our co-op just put in a new dryer, redid the plant. We
3 haven't had a lot of investment in Franklin County or
4 even Vermont for our industry. Our board of directors,
5 wise businessmen, were able to put us there, put the
6 dryer in, make us -- for these times when they talk
7 about the weekend milk, they can dry and powder it.
8 They can move that milk. Like they say, we have a safe
9 market.

10 As far as our board of directors, whether it's the
11 co-op store, whether I meet Harold John or I meet Bryan
12 Davis or whoever, I can ask 'em a question; they're
13 always front and center and allow me to speak to 'em and
14 give me advice or let me know what -- you know, what the
15 milk industry looks like or what's going on with our
16 co-op. They will talk to us.

17 Our CEO, Leon Berthiaume, same way. If you see
18 him, he's always open to you. I think our -- I have had
19 good luck at being able to talk to 'em as farmers, as
20 co-op members. They are always available to me. I have
21 had an excellent experience.

22 I would be in favor of us settling this today. I
23 think the ombudsperson is a good idea. I think the
24 person on the advisory council could provide new ideas.
25 I think if we settle this, I think we can move forward.

1 I agree with the previous speakers that this is kind of
2 a black eye for us. We need to move on. We need to do
3 better PR and band together and work together. Thank
4 you for your time.

5 THE COURT: Thank you.

6 Harold Howrigan, Jr.

7 HAROLD HOWRIGAN, JR.: Good afternoon,
8 your Honor. I'm Harold Howrigan, H-a-r-o-l-d
9 H-o-w-r-i-g-a-n. Thank you for allowing me the time to
10 provide comments today on this important issue.

11 I am a member of St. Albans Co-op Creamery. Our
12 family has shipped milk to the St. Albans Co-op for over
13 40 years. I farm with my brothers, Michael and
14 Lawrence, our wives, and my mom is still involved; and
15 my brothers and I have six sons that work with us on the
16 farm, and we have some girls too but they are not on the
17 farm. We currently milk around 1200 cows, have an
18 additional 800 young stock.

19 While growing up on our family farm in the '60s and
20 '70s, our formative years, cooperative was a very
21 household word, one that we all realized the importance
22 and value of. We sold our milk to the St. Albans Co-op,
23 and we sold our syrup to the Franklin County Maple
24 Co-op. And in the 1980s, when our farm needed to grow
25 to accommodate our growing family, we turned to Yankee

1 Farm Credit, a financial institution with cooperative
2 government and values.

3 As diverse as these entities all were in the
4 services they provided to our farm, their core
5 principles that they operate on were all virtually
6 identical. They have boards of directors elected from
7 their farmer member owners. Their governance and
8 oversight was provided by these farmers. All the
9 profits were either reinvested in their business or paid
10 out to their members in dividends.

11 In the early 1900s, it became imperative that dairy
12 farmers worked collectively to market their milk to
13 ensure that they had a fair price and that their milk
14 got picked up, period. The dairy cooperative is an
15 extension of the farm or the farm's an extension of the
16 co-op, whichever way you look at it. But at the end of
17 the day, the co-op puts all farmers on a level playing
18 field, large and small. For one dollar, you can
19 purchase a voting common stock in St. Albans Co-op, and
20 with that dollar you can milk all the cows that your
21 heart desires. And it also gives you access to milk
22 testing, hauling programs, seed and grain purchasing and
23 fertilizer financing, access to risk management advice.
24 And it goes on.

25 As the dairy industry transitioned into the 21st

1 century, milk production increased, the number of
2 dairies decreased. The milk market changed
3 significantly also with the consolidation of markets and
4 customer mergers. Dairy co-ops' marketing options
5 became fewer with more demands. DMS was formed by
6 farmer-owned co-ops to create some more efficiencies in
7 the movement and marketing of milk and to help deal with
8 these multinational corporations that were buying our
9 milk markets, to commingle milk, to create efficiencies
10 in hauling, field personnel to name a few.

11 At this time we became affiliated with DFA at our
12 co-op, and I think it's probably one of the best things
13 we have ever done. Instead of competing with them for
14 markets when milk was long, we're working with them in
15 markets to gain premiums and efficiencies wherever we
16 could.

17 As we gather here today at this fairness hearing
18 after seven years of litigation, I really think it's
19 time to approve this settlement and let the farmers and
20 their cooperatives and the industry move on to focus on
21 some positive and productive things that we need so
22 badly.

23 The new language in the proposal, along with the
24 advisory council member and the farmer ombudsperson,
25 will sufficiently address all the concerns that the

1 plaintiffs have raised over the course of this process.
2 These new positions, in addition to all the current
3 staff, should provide dairy farmers the assurance that
4 DFA/DMS are serving the best interests of their dairy
5 farmer member owners.

6 It would be important for these new representatives
7 to become versed on how milk is priced, the challenges
8 and fluctuations of the markets, co-op margins, and
9 their member milk components. They all fluctuate
10 seasonal. However, the most important part moving
11 forward would be in the communication, will still be on
12 the responsibility of the members to attend the
13 meetings, to read the newsletters, to build a
14 relationship with the co-op staff, the CEO or directors,
15 so that when they do have an issue, they'd feel
16 comfortable picking up the phone and calling, or if they
17 see 'em on the street or at church. Just --
18 conversation is easy if you know somebody. And if you
19 don't go there, you're always afraid just to ask a
20 simple question.

21 All this new language, access to financial
22 information, third-party testing, it will still take two
23 willing people to communicate efficiently and
24 effectively. Our co-ops have always gone above and
25 beyond to help our members, whether it's split samples,

1 sample rechecks. At our farm, we have 34 years running
2 of top-quality milk, and we have had sample requests
3 over the years, and most of the time when we thought our
4 components were off, it was something to do with our
5 feed efficiencies and the co-op was glad to help.

6 Judge Reiss, I thank you again for this opportunity
7 to speak, and after seven years, it's comforting to me
8 to see that there is some positive things coming out of
9 this hearing. With an additional advisory person on the
10 board and a new set of eyes looking at things for a
11 different way and somebody to mediate the questions that
12 the members have, this has all gotta be good, and the
13 transparency that the whole process has brought forward.
14 Thank you.

15 THE COURT: Thank you.

16 Alice Allen.

17 ALICE ALLEN: Good afternoon, your Honor.

18 THE COURT: Good afternoon.

19 ALICE ALLEN: I'm Alice H. Allen, A-l-i-c-e H.
20 Allen, A-l-l-e-n. It's a privilege to speak before you
21 today.

22 And my history of the dairy business is a long one.
23 I am not a second-generation farmer. I am actually
24 first-generation. My ancestors in Finland were dairy
25 farmers and my ancestors in Canada were dairy farmers.

1 I'm really the first one in this country, but my history
2 of involvement with the dairy business goes back to my
3 mentors. I call them my uncles although they weren't my
4 blood uncles. They were the Watt Brothers, DM Watt and
5 Sons, and they were producer dealers, and I milked cows
6 for them while I was in college, and one of the first
7 things they taught me was, "If you are going to go in
8 the business, Alice, you can't just milk cows. You have
9 gotta market your milk. You have gotta pay attention to
10 your market." They really had to because they were
11 producer dealers. They -- every bit of milk they made,
12 they bottled and sold. And if they made too much milk
13 and it went into the pool, they lost a lot of money.

14 So they taught me very well, and when I went out on
15 my own, I bought heifers from them. I milked cows for
16 them and they paid me in heifer calves. And when I
17 started out on my own on a rented farm, I took their
18 advise seriously and I joined a co-op. It was a small
19 marketing co-op, and I became very involved and was
20 later admitted to the board of directors, and once I was
21 on the board, they asked me to write their newsletter.
22 They never had a newsletter before. So I started
23 writing their newsletter, and that was back in the '70s.

24 And early in the 1980s, there were a group of us
25 young farmers -- we were young then, not so young now --

1 and we formed a milk-marketing study group. We were
2 called the Young Farmers Milk Marketing Study Group, and
3 that has evolved into the New Hampshire-Vermont Milk
4 Marketing Study Group. But we held meetings, and one of
5 the things that we -- we noticed over the years, that we
6 had really good participation when milk prices were low,
7 but the participation sort of dwindled when prices got
8 high.

9 And, again, looking back to my uncles, my so-called
10 uncles, it was important that we advocate for farmers to
11 get involved, because we're all really good at making
12 milk and growing crops, but the biggest part of our
13 business should be in marketing, and that actually is
14 probably the essence of the problems here, that farmers
15 didn't get as involved as they should.

16 So here I am, being the named plaintiff in this
17 case, and my husband, Larry, is also a named plaintiff.
18 He's the brains behind the outfit. I am the mouth. And
19 I have to confess to your Honor that early in the game
20 of this case, I also was one of the angry class
21 representatives, and I was thinking that our attorneys
22 weren't doing what they should. They weren't listening
23 to us. And we knew all there was to know of the milk
24 business, and they weren't -- they weren't fighting for
25 us.

1 Then my husband, the smart one, said after a
2 particularly angry phone call with other class reps, he
3 said, "You guys know what is achievable through an
4 antitrust class action litigation?" Wow. So we started
5 the investigation, I guess you could call it, and I
6 contacted my own personal lawyer in St. Johnsbury and
7 asked him questions, and then I have a very good friend
8 who is a retired lawyer from Washington, D.C., and asked
9 him. We started to learn that, gosh, what our attorneys
10 were doing was what they were supposed to be doing.
11 They were antitrust lawyers, and they knew their stuff.

12 Another thing that my lawyer in Vermont told me is
13 you couldn't find law firms in the state of Vermont or
14 New Hampshire that could do what these attorneys are
15 doing for you farmers. So that was, I guess you could
16 call it, my epiphany.

17 So when we learned that our attorneys really were
18 working for us, instead of being angry with them and
19 arguing with them, Larry and I decided, well, we're
20 going to work with them, and we are going to ask
21 questions. And I have to say that I pestered the
22 daylights out of them. And they have been very kind all
23 the way along, answered my questions and then some.

24 And I feel that we owe a great debt to them, and I
25 will not say a word against the fees that they need to

1 get because they have earned it. There's no other firm
2 that I have been aware of that could take on the load
3 that they took and be responsive to the criticism that
4 they received and still do their job.

5 And there was an interesting thing that I will add
6 from the end of Vermont's legislative session this year.
7 House Speaker Shap Smith made a comment that really
8 struck me. He said, "Criticism is vital to a
9 functioning democracy." Then he went on to say that
10 discussion and disagreement is a good thing, but there
11 comes a time when constant criticism and disagreement
12 becomes counterproductive. And I think that may have
13 happened in this case. And I agree that not all of us
14 will agree that this settlement is a good settlement,
15 but in my opinion, after having been involved in this
16 case from the beginning, and under the advice of my
17 long-dead uncles, I believe that what we have gained
18 through this settlement -- the farmers have talked about
19 the ombudsperson, and that to me personally is a very,
20 very important part of this injunctive relief, because
21 some of the Shire farmers or the farmers who maybe
22 aren't sure that they should ask a question, now there's
23 someone they can go to and they can get answers.

24 The advisory council person is also an extremely
25 person important. These are things that we haven't had

1 before, and to just throw them out and say -- and
2 marginalize them and say this isn't going to do any good is
3 really a shame because we worked very hard, and I think
4 this is a new beginning.

5 And the other thing that is very important to me
6 is, when you look around the room and you see all the
7 farmers that have taken time from their farms in a
8 really busy crop season right now, to come and express
9 their support or their opposition, it's important. We
10 have engaged farmers. They have become involved, and
11 that's a good thing because that is, in the future, the
12 only way we are going to have a positive impact, and
13 working together, it's difficult, it's very difficult,
14 and, again, functioning democracy needs criticism, but
15 we also need to work together. And I think that this
16 settlement gives us an opportunity to move forward and
17 work together. And there's a glut of milk all over the
18 world. It's not just in this country. And my husband
19 was also a milk hauler, so I got to see as a dairy
20 farmer and a milk hauler's wife what goes on when trying
21 to balance milk, and it's not -- it's not easy.

22 And I think some of these co-ops do a good job,
23 some do better than others, but I think it's something
24 farmers need to be made aware of that you need to have a
25 co-op board and co-op management that understands these

1 issues, and I am not saying that DFA has been saintly in
2 all of this. They have work to do, but this settlement
3 would keep their feet to the fire. There are now a lot
4 more farmers that are paying attention, and that's what
5 we need.

6 And I thank you very much for the privilege and the
7 honor of speaking to you today, your Honor. Thank you
8 very much.

9 THE COURT: Thank you.

10 Robin Sweet.

11 ROBIN SWEET: Afternoon.

12 THE COURT: Good afternoon.

13 ROBIN SWEET: Robin, R O B I N; Sweet,
14 S-w-e-e-t, Senior.

15 I wanted to express my views about this settlement.
16 I have been -- I am on my fifth generation on the farm.
17 I farm with my wife and my son. And I'm probably one of
18 the smallest farms speaking today, so.

19 I have served on the DFA Northeast Council for the
20 last nine years. Before that I was a delegate. And I
21 was kind of disappointed and upset with the plaintiffs
22 that think that we would sit there on the council and
23 look the other way while the co-op would take advantage
24 of the farmers and lower the base price. I thought we
25 was all together on this, and I am in favor of settling

1 the lawsuit.

2 I feel the money spent on the lawsuit could have
3 been put to better use for product development and
4 marketing to get a better price for the milk. And it's
5 dragged on for a long time, and it really should come to
6 a close.

7 Many of the provisions with the -- with the
8 advisory council member and -- it would all be taken
9 very seriously. Being a small farmer, I was treated
10 just as good on the board as the large farms, and they
11 listened to me, and it could be a good way to get back
12 to the farms for information, more information, and it's
13 a lot more than it used to be.

14 Years ago, when I was farming with my father, we
15 have been through two or three different co-ops, and DFA
16 has been a lot more transparent than a lot of them have
17 been. They just -- they're bigger.

18 And the ombudsman, it's a very important part.
19 Like I say, there's a lot of farmers that won't speak
20 up, don't come to the meetings, but if they feel they
21 have somebody they can talk to, it would be beneficial
22 and it would help 'em get along a little better, so.

23 With that, it's getting close to chore time, so I
24 will be short. So thank you.

25 THE COURT: Thank you.

1 Heidi Dolloff.

2 HEIDI DOLLOFF: Good afternoon, your Honor.
3 I'm Heidi, H-e-i-d-i, Dolloff, D-o-l-l-o-f-f.

4 Thank you for the opportunity to participate in
5 this hearing today. My name is Heidi Dolloff, and with
6 my husband, Michael, and our two children -- Hannah
7 who's 12 and Matthew who is 6 -- I operate a 75-cow
8 dairy farm in Springfield, Vermont.

9 Both my husband and I grew up on our family dairy
10 farms in New Hampshire, but due to circumstances beyond
11 our control, we did not have the opportunity to continue
12 farming them. So due to our desire to continue farming,
13 we bought an empty farm in Springfield where we began
14 our dairy.

15 I am a 4-H club leader. I serve as vice chair of
16 our state and regional promotion organization. I have
17 been a past president of our county farm bureau, and I
18 have been a past board of trustee on the state farm
19 bureau. I also serve on our county FSA committee, and I
20 am a DFA delegate.

21 In 2014, we received the honor of being named
22 Vermont's Dairy Farm of the Year. I am here in support
23 of this settlement. We produce about 1.8 million pounds
24 of raw milk annually that has been marketed through
25 Dairy Farmers of America since 2003 when we joined the

1 cooperative.

2 From 1997, when we began farming in Springfield, to
3 joining DFA in 2003, we were an independent farm. As a
4 small dairy, we faced many challenges dealing directly
5 with the processors. We found significant value in the
6 DMS system, and because of the secure milk market and
7 the stability we found in the DMS system, we chose to
8 join DFA in 2003. Not only did I like the equity
9 structure of DFA, I felt that the cooperative had its
10 members' best interests in mind, and by taking the
11 business of marketing my milk off my plate, I am able to
12 focus on what I love to do: ensuring good health of my
13 cows and producing high-quality milk.

14 I have never once worried about the business side
15 of things within DFA. And since joining DFA, I am
16 confident of the abilities and appreciate the
17 transparent nature of the organization. Multiple times
18 throughout the year I attend leadership conferences that
19 I have direct access to the top management and the top
20 dairy farmer leaders within DFA, and they will give me
21 honest answers to my questions.

22 DFA is a strong farmer-like grass roots cooperative
23 that I know is looking out for the best of their members
24 and the industry as a whole.

25 In the settlement DFA has admitted no wrongdoing,

1 and I personally believe they have not -- they have
2 done -- they have not done anything wrong. I am for the
3 provision in the settlement that will allow all members
4 to feel as confident about the cooperative as I do.

5 The installation of the advisory member and the
6 ombudsman's roles on the council may be valuable for
7 some members by providing access to a third party for
8 questions and grievances. I think whenever there is
9 more transparency involved, it is a good thing.

10 Dairy farming to Mike and I is more than a milk
11 check. It is a way of life. And our cooperative is our
12 biggest partner in helping us protect our right to farm.
13 So we need to continue to work together, to support the
14 settlement, and put this lawsuit behind us once and for
15 all. Thank you.

16 THE COURT: Thank you.

17 Ed King?

18 EDGAR KING: Good afternoon, your Honor.

19 THE COURT: Good afternoon.

20 EDGAR KING: It's a privilege to be here to
21 represent my friends and my neighbors and my co-op
22 members.

23 I am a third-generation dairy farmer --

24 THE COURT: So we probably can guess at the
25 spelling of your name, but I need to make sure --

1 EDGAR KING: Oh, King, K-i-n-g. First name
2 Edgar, E-d-g-a-r. I apologize. I had that written
3 right in front of me and I totally overlooked it.

4 I am a third-generation dairy farmer. I farm with
5 my wife and two of our four sons on a farm that's been
6 in the family for about 110 years. We're excited that
7 we have high school-age grandchildren who want to farm.
8 As you can see, that would make the fifth generation.
9 Together, we milk about a thousand cows near
10 Schuylerville, New York. Now that's in eastern edge of
11 New York, north of Albany about 40 miles.

12 I have had the privilege of representing my
13 neighbors and friends for 20 years on the Dairylea board
14 of directors and for a couple years recently, and then I
15 decided it was time to pass the baton.

16 I grew up on my family's dairy farm. I graduated
17 from Cornell in 1963, and I had the foresight to be
18 married before I graduated so my wife and I came back
19 home and began dairying with 32 cows.

20 In 1972 we expanded by constructing a 110-cow barn.
21 And as our sons came home to the business, and in one
22 case one left for another pursuit, we have grown the
23 business to the present size today. It's been sort of
24 static for a few years.

25 We love our cows. We're fortunate to have

1 developed the kind of cattle that others appreciate.
2 And marketing them has proven to be both satisfying and
3 profitable. Our family's always marketed our milk
4 through a cooperative because we recognize that their --
5 that the cooperative's professional marketers are best
6 qualified to represent us in the marketplace.

7 I have been active in a number of farm
8 organizations, and I currently or I have served as an
9 elder in my church for, I don't know, more than 40
10 years. I didn't really look back, but it's more than
11 40.

12 And my interest and issues facing farmers resulted
13 in me becoming a bit of an industry activist that led to
14 leadership positions in numerous organizations, and I
15 have had some experience that not a lot of other farmers
16 have had. I -- among other things, I spent 11 years as
17 a deputy commissioner of agriculture in New York where I
18 had all of the milk program responsibilities, both
19 economic and sanitary. After that I spent some time in
20 our Assembly with the Assembly agriculture committee.
21 That relates to your House here in Vermont. And I was
22 the dairy industry guru for the Assembly ag committee
23 and for a joint legislative commission on dairy industry
24 development.

25 That was followed by three years as manager of

1 government and customer relations with the Regional
2 Cooperative Marketing Agency known in the trade as --
3 the acronym was RCMA, and that was a super co-op. It
4 priced fluid milk for all the co-ops and for independent
5 farmers in the marketplace in the Northeast.

6 All during that time, I -- by the good graces of my
7 wife and my family, we continued with our dairy farm
8 operation, but I have had some unique experiences, and I
9 have had the chance to sort of look at things from
10 different perspectives, and the knowledge that I gained
11 while serving in all these various capacities is that
12 the business of marketing milk to processors is very
13 demanding. In short, it's a tough business, a business
14 that's not for the faint hearted and therefore best left
15 to professionals, like cooperative.

16 I just can't seem to give up this public work so I
17 serve today as -- and I think my sons enjoy it that I am
18 away from the farm, and -- but I enjoy working with
19 them. I serve as a *pro bono* commissioner representing
20 agricultural issues, interests, on our New York State
21 board of real property services. And for the last seven
22 years I have chaired the New York State Farm Service
23 Agency state committee. So why am I here today?

24 I am here because I strongly support the proposed
25 settlement. I have attended a number of these hearings,

1 and I have reviewed the proposal, and I am completely in
2 favor of it. We can accomplish what we need to best by
3 working through, I believe, the structure of DFA/DMS and
4 others in order to receive the highest possible returns
5 for our members.

6 I have watched all of the machinations in the
7 marketplace, from seeing producers lose markets, people
8 who thought they had a guaranteed market forever with a
9 processor only to be dumped because the processor had
10 too much milk. And DFA's never -- never terminated a
11 member because we had too much milk. We have marketed
12 that milk for our members. And I think that's to our
13 credit. We didn't seek to get away from the
14 responsibility of marketing all the milk that we had.

15 Never before has bringing resolution to this issue
16 been more critical than it is now, especially given the
17 excess supply of milk in our region. As I see it, the
18 farmers opposing the settlement -- and I will be kind of
19 blunt here -- most likely are probably seeking to
20 destroy DFA. That's my opinion.

21 My experience in the marketplace tells me that
22 given today's market conditions, if DFA no longer
23 existed, given today's present market conditions, prices
24 would -- to the farm, would plummet. That's my
25 observation, my estimation.

1 The settlement provides -- it gives provisions
2 which would add a new voice to the area council -- I am
3 in support of that -- and a new person for others to
4 approach to resolve the issues of distrust about DFA and
5 DMS. There's nothing we can't solve if we talk to each
6 other. Therefore, I see it a benefit to the portion of
7 the settlement entitled Farmers', Affiliates' and
8 Cooperatives' Right to Terminate. This provision would
9 enable an unsatisfied member to terminate their
10 membership upon their request. That wouldn't be
11 constrained.

12 So in summary, I just wish to see this lawsuit end,
13 period. That's why I'm here today. I thank you for
14 your attention and allowing me for the opportunity to
15 express my thoughts.

16 THE COURT: Thank you.

17 Darlene Reynolds.

18 DARLENE REYNOLDS: Hello. My name is
19 Darlene Reynolds, D-a-r-l-e-n-e R-e-y-n-o-l-d-s. And I
20 am here in support of settling this.

21 I am a first-generation farmer. My husband had a
22 farm with his family but they divorced, and so we were
23 out to start on our own in 1991, and during that time,
24 we leased cows and we leased a farm, and it was a rough
25 start, you know, when you try and take and start on your

1 own and get everything started. And then we were able
2 to move from Highgate to Alburg, Vermont, where we are
3 now, in 1994, and began our journey of becoming the
4 farmers that we are today.

5 We currently milk about 685 cows, and we have about
6 450 young stock. And I also have four daughters, and
7 we're a very feminine farm. About 50 percent of the
8 people that we have employed for us are female, and I
9 take a lot of pride in that. And our current name is
10 Crosswinds Dairy and Daughters. And I am a member of
11 DFA, and I was not a member of DFA in the beginning. I
12 had a previous cooperative but chose, in 2002, to become
13 a DFA person.

14 The first immediate thing that I got when I came to
15 DFA is how much involvement they wanted me to become
16 into, which excited me, because as a first generation,
17 and me not from a dairy farm -- I actually have a degree
18 in social work -- I really wanted to find out how things
19 worked, and the first thing they said is, Well, why
20 don't you become a delegate. So it was -- it took me
21 probably three or four years. I made the decision why,
22 why not. So I became a delegate and I feel like my
23 educational journey had began where I was able to do
24 some traveling to annual meetings. I was able to go to
25 Syracuse for other meetings. And it allowed me to find

1 out how milk marketing worked. It allowed me how to
2 figure out that the Northeast was not the sole place for
3 milk, and it wasn't just in Vermont that things
4 happened, that it was on a national level. It really
5 gave me a good objective of what we were doing back at
6 home, you know, of what was going on nationally as well.

7 So I think that in settling this, with the people
8 that you have on the advisory committee, the council, as
9 well as the ombudsperson to help with mediation, it only
10 pushed forward on the educational piece.

11 And I want to say -- I want to thank Miss Allen for
12 coming up here in support of this settlement. I think
13 it's the first step in us as a family, because I
14 believe -- even being a first-generation, I gotta say
15 that everybody that's behind me, they're a part of my
16 family now. They say that they're third-, fourth-. I
17 have always been impressed on how much they have allowed
18 me, being kind of an outsider, to come in and be a part
19 of it and treat me as an equal and become a part of that
20 family.

21 So with this being settled, I believe it can start
22 the process of healing and pushing our industry forward,
23 which it desperately needs right now with the fact of
24 what's going on in our milk markets. Thank you.

25 THE COURT: Thank you.

1 Rob Morrill.

2 ROB MORRILL: Thank you, your Honor, for
3 the privilege of speaking today. My name is Rob
4 Morrill, M-o-r-r-i-l-l. And our family resides in
5 Concord -- Pennycook, New Hampshire, which is a village
6 within the city of Concord. Geography is we are an hour
7 north of Boston, an hour west of the Atlantic Ocean, and
8 an hour south of the White Mountains.

9 We are very fortunate to farm within the city of
10 the capitol of New Hampshire where I actually live. We
11 farm approximately a hundred acres of field land right
12 there that goes back to the first minister of the city
13 of Concord that our farm currently owns, my wife and I.
14 And when we're working out in the fields, in the
15 background is the capitol dome of the city, so -- of the
16 whole state. Excuse me.

17 But we farm in the village of Pennycook. My
18 grandfather purchased that farm in 1925. I'm the third
19 generation myself, and three of our sons is involved in
20 the business. There's a fourth generation. They
21 officially came in and we became an LLC in 2012, where
22 we expanded and leased a second location 60 miles
23 away in Acworth, New Hampshire, which is on the
24 Connecticut River Valley. So we've learned what farming
25 two operations 60 miles apart is like, but their future

1 is they hope to build a new facility.

2 My wife and I were very blessed with four children.
3 The three boys have come back to the farm. And our
4 daughter currently is on staff at Cornell as a dairy
5 extension specialist, and she married a dairy farmer in
6 upstate, near Potsdam, New York. So to think that they
7 all wanted to be part of the dairy industry, we were
8 very fortunate because I can remember taking -- going
9 with my grandfather with canned milk to the plant on
10 North State Street in Concord when I was a very, very
11 young boy. They were a member of Concord Dairy, which
12 was a farmer-owned co-op back then, of which today it is
13 owned by HP Hood company, and the milk from our farm
14 still goes to that exact same plant. Every year of my
15 life that is where our milk has gone, and I drive past
16 that plant every day going to and from my house to the
17 farm. So that's kind of a unique thing within our
18 industry because so many people don't have an awareness.

19 However, in approximately 2003, we had been through
20 Concord Co-op. They merged with Weeks Dairy. It was
21 sold to Crowley Foods, then to NDS. Then the plant was
22 sold to HP Hood. During the Crowley time was when DMS
23 was formed. We were independent producers at that point
24 and it didn't take too long to realize we needed to
25 become members of this co-op because, yes, we felt we

1 had a very strong market because it was right there, the
2 fluid market, but the market -- milk-marketing industry
3 has changed today considerable. It's not a local
4 market. It is a world market, and milk marketing, you
5 need to be looking at the world market all the time
6 today for this industry. And so this settlement allows
7 DMS and DFA to pursue those interests. They don't need
8 to be tying up energy, you know, to take care of this
9 litigation. They can be pursuing the avenues to help us
10 as farmers back on the farm, to procure our milk
11 markets, because if we let things go the way they are
12 today, unfortunately, I am afraid, that it could be
13 worse than it is. And, you know, I am looking at --
14 really enjoyable to looking forward to watching the
15 future generations of our farm continue, and, you know,
16 we need this settlement to settle so we can move
17 forward. So we are continually in support of this
18 litigation to be settled. Thank you.

19 THE COURT: Thank you.

20 That's the end of the people who gave us notice,
21 timely notice of their intent to appear and who are
22 actually class members and haven't opted out.

23 So we are going to take our midafternoon break. It
24 will be approximately 10 minutes. When we come back, if
25 the attorneys want to make any further arguments, they

1 may do so.

2 Anything to bring to my attention before we break?

3 MR. PIERSON: No, your Honor.

4 THE COURT: Let me ask, what would you like to
5 bring to my attention?

6 CLAUDIA HAAR: Just that I had wanted Joshua
7 Haar to speak as my proxy, and Dave Ward and Rod
8 Jennison had also wanted him to speak on their behalf,
9 and we weren't sure if you were going to save that to
10 before the counsel or after.

11 THE COURT: Why don't we do that right now and
12 we will take our break afterwards.

13 CLAUDIA HAAR: Thank you.

14 THE COURT: So come on forward. And I thought
15 that you had given the proxy to Jonathan Haar, but I
16 understand that it's now been given to you. So go ahead
17 and say your name for the record.

18 JOSHUA HAAR: Thank you very much. Joshua
19 Haar. That's H-a-a-r.

20 All right, yes. A couple quick remarks to begin
21 here.

22 First of all, I wish to thank the Court for hearing
23 from as many people as it has today, and I wish to thank
24 everyone who has showed up.

25 As quite a few of us have heard today, it is very

1 difficult to get farmer input. And even so, I wish to
2 direct the attention to the Court that very few of those
3 who spoke today are not personally affiliated with
4 either a named defendant or a co-conspirator. The
5 reason the law provides that the Court must consider the
6 reaction of the class, not the defendants, is that
7 defendants and those affiliated with them have a clear
8 incentive to settle.

9 Of course these individuals think it's time for
10 this case to be settled. In the case of DFA members,
11 Northeast Area Council members, and DairyOne, these
12 people are members of organizations which are personally
13 called to task for their violations of federal antitrust
14 law. In the case of members of St. Albans Cooperative,
15 their cooperative participated with DFA in creating DMS,
16 which is a named defendant also being brought to task
17 for its violations of federal law.

18 Now, regarding the response of the class, there
19 are, I understand, approximately 1200 letters in support
20 of this proposed settlement whereas last time there was
21 barely a dozen. It's pretty clear what happened.
22 There's only one party to this case that has the ability
23 to reach that many farmers, together with the power to
24 make sure these farmers actually sign and deliver
25 letters in support.

1 I would like to refer the Court to, in our list of
2 exhibits, the -- I believe it is the plastic page where
3 you have there the Oneida-Madison Milk Cooperative
4 annual meeting agenda, and if you turn to page -- the
5 second page of that agenda, you will note that two DFA
6 members appear on the agenda.

7 Now, my understanding is that the law states that
8 it is improper for defendants to contact class members
9 in regard to settling a case. Not only were these
10 people contacted, they presented at the meeting, and if
11 you turn to the next page, you will see on the
12 Oneida-Madison Milk Co-op settlement update this co-op
13 put out a request for support of the settlement.

14 We heard from several members of the South New
15 Berlin Co-op today. I would refer the Court to the
16 declaration of Mr. Kenneth Dibbell, document 722, filed
17 March 11, 2016, in which case Mr. Dibbell was personally
18 threatened by Mr. Ed King, general manager of the South
19 New Berlin Co-op, because, quote, If I -- this is
20 Mr. Dibbell speaking. Quote: If I encouraged farmer
21 members to oppose this settlement through my petition --
22 DFA markets a hundred percent of South New Berlin
23 milk -- these people are on the line for their entire
24 cooperative.

25 I would also like to refer the Court to the letter

1 All South New Berlin Co-op Milk Producers. This was
2 delivered to my proxy provider, I guess, Mr. Dave Ward:
3 These co-ops are tightening the noose around the necks
4 of farmers as DMS realizes that if it does not get
5 enough support for this settlement, it is going down.

6 I would also like to refer the Court to the
7 letter -- just a moment, please. Okay, Cortland Bulk
8 Milk Producers Corporation. This is document number
9 724, filed March 16, 2016. Mr. Stuart Young, the CEO of
10 East River Dairy and president of Cortland Bulk Milk
11 Producers Corporation, says, I quote: DFA and DMS are
12 responsible for marketing most of our members' milk.

13 Now, we were surprised to see this letter on the
14 docket because we had seen that name recently too. If
15 you turn to the next page, you will see the Dairy
16 Farmers of America. This is our milk production slip
17 from October 16, 2015, for the milk for the period
18 ending November 30 last year. At the bottom of the page
19 you will see a \$16 deduction going to Cortland Bulk Milk
20 Producers Corporation. That shows very clearly how we
21 obtained the support: We purchased it.

22 THE COURT: Okay. A couple more minutes.

23 JOSHUA HAAR: Yes.

24 One other question I would have for the Court. I
25 understand I started roughly four, five minutes ago.

1 Mr. Dave Ward and Mr. Rod Jennison both requested to
2 speak, so I would like to know if I am permitted five to
3 seven minutes or --

4 THE COURT: That wouldn't be fair to other
5 people.

6 JOSHUA HAAR: -- the ten to 14?

7 THE COURT: So if you can finish up in the
8 next three, four minutes, that would be fine.

9 JOSHUA HAAR: Okay. Will do so.

10 One other procedural issue with this settlement is,
11 because -- Mr. Doug Ricker testified earlier -- excuse
12 me, spoke earlier regarding the efforts of class counsel
13 to secure new class representatives. It was clearly in
14 their incentive to do so. But a look at the docket will
15 explain that the action in response to that motive did
16 not come from subclass counsel. It came from
17 defendants; note the motion to decertify. This is what
18 provided Mr. Pierson the opportunity to bring up these
19 replacement class representatives. But that was not the
20 only motive on the table.

21 You see, if you look a little further back to the
22 filing from the Eastern District of Tennessee, you will
23 see that Mr. Kuney did exactly the same thing,
24 successfully decertifying the DFA subclass in the
25 Southeast litigation. His signature appears at the top

1 of the filing. The primary -- or the first reason he
2 listed for decertification was that the class members
3 were -- or the class representatives, excuse me, were
4 not DFA members and they were not typical of the DFA
5 subclass.

6 None of the four people who Mr. -- the class
7 counsel put forward as class representatives are DF- --
8 are or have ever been DFA members. Mr. Kuney knew that
9 this would be a clear way to get the class undermined.

10 Now, Mr. Pierson also knew this because we told him
11 when -- if you remember from proceedings a while back,
12 the class certification hearing, when he had flown up to
13 the farm to argue my father out of speaking, and that
14 was one of the issues which we discussed at length. So
15 Mr. Pierson knew that that would undermine his class,
16 but he did it anyway so that he could get those class
17 members on to tip the scales in favor of settlement.

18 Now, the presumption of fairness which applies in
19 class actions is designed to safeguard settlements which
20 are truly fair. Where the collusion has been such an
21 issue in this case that this Court has felt compelled to
22 reference it at multiple proceedings, and wherever
23 evidence at this fairness hearing appears of
24 professional misconduct on the part of the attorneys in
25 trying to trick the class representatives into thinking

1 there was no relief available at trial, the presumption
2 of fairness no longer applies.

3 So for -- for that reason, there are procedural
4 issues with this settlement in addition to the
5 substantive ones touched upon earlier. And on the
6 whole, the coercion of so many of the class members --

7 Actually, one more note on that and then I will
8 conclude.

9 THE COURT: Okay.

10 JOSHUA HAAR: Is that the -- we had submitted
11 the declarations of -- I don't remember the exact
12 number, but the farmers whose milk inspectors showed up
13 and told them to sign this or they might not have a milk
14 market, and I understand those for reasons were not
15 received, but the fact of the matter is, there are 1200
16 letters --

17 THE COURT: Well, let me just -- let me just
18 say.

19 JOSHUA HAAR: Okay.

20 THE COURT: If -- I can't look at things in
21 private. So that's what I have tried to make clear.
22 It's against the ethical rules for me to receive things.
23 So if you want things docketed, that's fine, but I can't
24 look at things without showing them to the parties and
25 the attorneys without violating my rules.

1 JOSHUA HAAR: Okay, I understand.

2 THE COURT: So that's how that happened.

3 JOSHUA HAAR: So --

4 THE COURT: So let's have you finish up --

5 JOSHUA HAAR: Yep.

6 THE COURT: -- and then we will take our
7 break.

8 JOSHUA HAAR: So -- but the evidence appears
9 clearly on the docket where these letters came from.
10 You have the three opt-outs, docket numbers 2027, 2028,
11 and 2025, which state, "When my milk inspector brought
12 me a form to sign" -- you have document number 1281 --
13 "my DFA/DMS inspector asked me to fill this out and sign
14 it. I think it should be illegal for him to do this."

15 In fact, it is illegal. It's federal extortion.
16 So the procedural problems with this settlement, coupled
17 with its substantive inadequacies, require, in my humble
18 opinion, that it be denied. The fact of the matter is,
19 it's -- it's simply not just to allow the conduct which
20 has been going on to continue, which is why the factors
21 provided under Grinnell provide plenty of discretion for
22 this settlement to be thrown out the way it deserves and
23 for our case to be brought forward. Thank you very
24 much.

25 THE COURT: Thank you.

1 All right. We will take our midafternoon break.
2 As I said, it's approximately 10 minutes or so, and we
3 will come back for any arguments the attorneys want to
4 present. Thank you.

5 (Court was in recess at 2:39 p.m.)

6 (The following was held in open court at 2:57 p.m.)

7 THE COURT: We are back on the record in Alice
8 Allen versus Dairy Farmers of America, and now we will
9 hear from the attorneys if they want to offer any
10 further argument in favor or against the settlement. I
11 will start with the plaintiffs' counsel.

12 MR. PIERSON: Thank you, your Honor. Kit
13 Pierson for the DFA/DMS subclass. And, your Honor, I
14 will be very brief. I will not use my five minutes, but
15 there were a couple comments I did want to make.

16 First, I --

17 THE COURT: I wasn't planning on leaving the
18 attorneys with five minutes.

19 MR. PIERSON: No, I understand.

20 THE COURT: Okay.

21 MR. PIERSON: I am just kidding, your Honor,
22 but I will, in fact, be brief because I think -- I think
23 the Grinnell factors here -- and we will largely stand
24 on our briefs. I think the Grinnell factors very
25 clearly and decisively point in favor of settlement

1 here.

2 I did want to --

3 AUDIENCE MEMBER: Can't hear him.

4 AUDIENCE MEMBER: Can't hear.

5 THE COURT: Can't hear him. Okay.

6 MR. PIERSON: Okay.

7 All right. I did want to add that I think the
8 Court can get additional confidence here from the fact
9 that the Vermont Attorney General's Office has weighed
10 in, the Vermont Agricultural Committee, the Vermont
11 Senate Appropriations Committee and the New Hampshire
12 Agricultural and Environmental Committee -- were all, I
13 think, additional indicia of reasonableness.

14 Your Honor, one of the -- one of the challenges in
15 this case -- and we're both painfully aware of it -- has
16 been -- has been the distrust and, in some instances,
17 hostility that characterizes aspects of this industry,
18 and at some level I feel like, you know, we got caught
19 in the middle of that a little bit.

20 It's very, very difficult, but I think it's an
21 important aspect of the settlement that others have
22 emphasized and that I wanted to emphasize that the
23 settlement does a variety of things and a variety of
24 things that haven't been accomplished by anyone in this
25 industry in 20 years. But among those are -- are

1 disclosure of a very voluminous record so people can see
2 what the real facts are as opposed to rumor.

3 Another thing is transparency in the management
4 going forward. And the other is what a number of people
5 talked about today, the role of the ombudsperson in
6 particular in creating a better mechanism for dialogue
7 so the industry can move forward based on facts and
8 reality and an ability to have a dialogue, and I think
9 those things are important.

10 The last two comments I wanted to make, your Honor,
11 are these: So it's been seven years, and I do want to
12 thank the Court for -- it's been a very challenging
13 case, as you know. I want to thank you for your hard
14 work, for your patience, and for -- and for your
15 fairness, and it's recognized and appreciated.

16 I also want to give one other thank you,
17 your Honor, which is to my colleagues, Brent Johnson
18 and Emmy Levens. It's been a tough case for the
19 attorneys. You know that. But I watched -- I hired
20 these attorneys, and I have watched them grow up on this
21 case for seven years. They have been incredibly
22 dedicated to the subclass and to this litigation and to
23 professionalism for seven years, and as their boss, as
24 their friend, as their colleague, I want to thank them
25 for their dedication.

1 THE COURT: All right. Thank you.

2 Anybody else from the plaintiffs' counsel that
3 wants to speak?

4 MR. ABRAMS: Thank you, your Honor. Bob
5 Abrams on behalf of the non-DFA/DMS subclass.

6 And I too want to thank the Court. I particularly
7 want to -- I will make this point. When we came to you
8 with the initial settlement agreement, I thought it was
9 a very good settlement agreement. You suggested that we
10 focus on some nonmonetary concepts. We did that, and we
11 did it again. And I'm going to stand here and say I can
12 tell you, at least from perspective, and I know the
13 perspective of virtually everybody that I have
14 interacted with, believes it is now an excellent
15 settlement agreement.

16 I don't know that the history is particularly
17 important, but a lot of these provisions, particularly
18 the ombudsman provision -- for example, there was a
19 provision in the Southeast SMA settlement provisions
20 that was akin to that, but it isn't nearly as good as
21 that. And we did go back and we, together with all the
22 lead counsel on the plaintiffs' side and with DFA,
23 forged what is truly, I think, an excellent nonmonetary
24 provision in that respect and in many others that
25 your Honor now sees.

1 So I think -- I thank you. I thank you on behalf
2 of the class we represent, and hopefully the Court will
3 approve the settlement.

4 THE COURT: Thank you.

5 Anybody else from the plaintiffs' counsel
6 perspective?

7 MR. SMITH: Thank you, your Honor. Daniel
8 Smith for the non-DFA subclass. Also would be very
9 brief.

10 I think when we came into the case we made it very
11 clear that we had heard all of the directives that the
12 Court had provided for the path forward and tried to
13 follow that. I think you have heard from -- as to the
14 substantive provisions on the substantive side. The one
15 thing I would add there is that the -- the new council
16 members specifically tasked with dealing with higher
17 milk prices, which is ultimately the substance of this
18 case, over-order premiums, that's the specific charge
19 that the advisory council was giving.

20 On the procedural side, I think the one --

21 (Disruption from sound interference in
22 courtroom.)

23 MR. SMITH: On the procedural side, I
24 think the one thing to accentuate there is your clear
25 directive, was the need to hear from the class, and I

1 think what you have heard today is from the class, and
2 you have received the letters that we received. I think
3 both Commissioners Taylor and Aubertine gave their
4 opinion that this is representative of the opinion of
5 the class of what's been expressed to you. So those
6 would be the two points that I would accentuate.

7 And I obviously don't have the history with the
8 case to extend appreciation, but I would just end where
9 I started, which is that the guidance you provided
10 really did lay out the path for -- for reaching a
11 settlement two days before Christmas. You gave us a
12 pretty tight window, but we did manage to meet your
13 path. Thank you.

14 THE COURT: All right, thank you.

15 Any further comments on behalf of plaintiffs'
16 counsel before I turn to the defendants?

17 Mr. Kuney.

18 MR. KUNEY: Thank you, your Honor. Steve
19 Kuney on behalf of DFA and DMS. I'll try to keep to the
20 brevity that my colleagues have demonstrated so far.

21 I do appreciate the Court's attitude today in
22 providing opportunity for all of the class members who
23 had expressed an intention to speak to have the
24 opportunity notwithstanding the issue about the timing
25 of the postmarks. I'm glad those people had a chance to

1 speak, and I think they feel the way we would like
2 people to feel about having had a chance to participate
3 in a process and having their voices heard so that kind
4 of as citizens and as class members I think they feel
5 very good about the opportunity they had here this
6 afternoon.

7 I want to do something that I almost never do
8 anymore which is express surprise at this point in my
9 career. I try not to say I am surprised by things. But
10 as the -- typically in the class cases, being on the
11 defense side, the settlement process is usually a bit of
12 tug-of-war for all you are trying to do is not let the
13 other side pull very far on the rope.

14 The way the negotiation process played out here, it
15 actually became an opportunity to try to do something
16 positive. And the many -- the praiseworthy comments you
17 heard this afternoon about the new positions that have
18 been created and about the new transparency that has
19 been created, about the new, positive framework it may
20 bring to bear on the co-op, the people on the DFA side
21 actually endorse that wholeheartedly, and I can, as
22 their counsel, endorse it as well, that it was a rare
23 opportunity as a defendant in a class case to feel as if
24 the settlement process gave me and us a chance to do
25 something better notwithstanding our views about the

1 || allegations that had led to the case in the first place.

2 So appreciate that, and appreciate the Court's
3 patience and attention to the case throughout, and
4 again, thank you on behalf of the class members here
5 today.

6 THE COURT: All right. At this point I am
7 going to take the matter under advisement. I am going
8 to get you a prompt written decision. I have to do it
9 in writing. It's just not something that the Court can
10 reel off on the record without giving careful
11 consideration to the laws and the facts.

12 I have read everything that you filed. That was
13 quite an expedition of its own. And when I say prompt,
14 I do it in the Court's quotation marks, so what you
15 think is prompt might be different from what I think is
16 prompt, but certainly within the next 60 days.

17	Thank you.
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18 MR. PIERSON: Thank you, your Honor.

19 MR. ABRAMS: Thank you, your Honor.

20 (Court was in recess at 3:08 p.m.)

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22 C E R T I F I C A T I O N

23 I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Anne Nichols Pierce

June 1, 2016
Date

Anne Nichols Pierce